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WHO: Sponsored by the Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 19, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1467]

RIN No. 7100 AE 04

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2014. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2014 at $13.3 million (from $12.4 million in 2013). This amount is known as the reserve requirement exemption amount. The Regulation D amendments also set the amount of net transaction accounts at each depository institution (over the reserve requirement exemption amount) that is subject to a three percent reserve requirement in 2014 at $89.0 million (from $79.5 million in 2013). This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.

DATES: *Effective date:* December 5, 2013.

Compliance dates: The new low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve maintenance period that begins January 23, 2014. For depository institutions that report deposit data weekly, this maintenance period corresponds to the fourteen-day computation period that begins December 24, 2013. For depository institutions that report deposit data quarterly, this maintenance period corresponds to the seven-day computation period that begins December 17, 2013. The new values of the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to determine the frequency at which a depository institution submits deposit reports effective in either June or September 2014.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202) 452–3565, Legal Division, or Ezra A. Kidane, Financial Analyst (202) 973–6161, Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

Reserve Requirements

Pursuant to section 19(b) of the Federal Reserve Act (Act), transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased 9.0 percent (from $5,770 billion to $6,289 billion) between June 30, 2012, and June 30, 2013. Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2014 at $13.3 million, an increase of $0.9 million from its level in 2013.[1]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 14.9 percent (from $1,371 billion to $1,575 billion) between June 30, 2012 and June 30, 2013. Accordingly, the Board is amending Regulation D to increase the low reserve tranche for net transaction accounts by $9.5 million, from $79.5

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

million for 2013 to $89.0 million for 2014.

The new low reserve tranche and reserve requirement exemption amount will be effective for all depository institutions for the fourteen-day reserve maintenance period beginning Thursday, January 23, 2014. For depository institutions that report deposit data weekly, this maintenance period corresponds to the fourteen-day computation period that begins December 24, 2013. For depository institutions that report deposit data quarterly, this maintenance period corresponds to the seven-day computation period that begins December 17, 2013.

2. Deposit Reports

Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year and assigns them to one of four deposit reporting panels (weekly reporters, quarterly reporters, annual reporters, or nonreporters). The panel assignment for annual reporters is effective in June of the screening year; the panel assignment for weekly and quarterly reporters is effective in September of the screening year.

In order to ease reporting burden, the Board permits smaller depository institutions to submit deposit reports less frequently than larger depository institutions. The Board permits depository institutions with net transaction accounts above the reserve requirement exemption amount but total transaction accounts, savings deposits, and small time deposits below a specified level (the ''nonexempt deposit cutoff'') to report deposit data quarterly. Depository institutions with net transaction accounts above the reserve requirement exemption amount and with total transaction accounts, savings deposits, and small time deposits greater than or equal to the nonexempt deposit cutoff are required to report deposit data weekly. The Board requires certain large depository institutions to report weekly regardless of the level of their net transaction accounts if the depository institution's total transaction accounts, savings deposits, and small time deposits exceeds or is equal to a specified level (the ''reduced reporting limit''). The nonexempt deposit cutoff level and the reduced reporting limit are adjusted annually, by an amount equal to 80 percent of the increase, if any, in total transaction accounts, savings deposits, and small time deposits of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

From June 30, 2012 to June 30, 2013, total transaction accounts, savings deposits, and small time deposits at all depository institutions increased 7.0 percent (from $8,890 billion to $9,508 billion). Accordingly, the Board is increasing the nonexempt deposit cutoff level by $16.2 million to $306.7 million in 2014 (from $290.5 million for 2013). The Board is also increasing the reduced reporting limit by $91 million to $1.719 billion for 2014 (from $1.628 billion in 2013).[2]

Beginning in 2014, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $13.3 million (the reserve requirement exemption amount) or with total transaction accounts, savings deposits, and small time deposits greater than or equal to $1.719 billion (the reduced reporting limit) are subject to detailed reporting, and must file a Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900 report) either weekly or quarterly. Of this group, those with total transaction accounts, savings deposits, and small time deposits greater than or equal to $306.7 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total transaction accounts, savings deposits, and small time deposits less than $306.7 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $13.3 million (the reserve requirement exemption amount) and with total transaction accounts, savings deposits, and small time deposits less than $1.719 billion (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $13.3 million (but with total transaction accounts, savings deposits, and small time deposits less than $1.719 billion) are required to file the Annual Report of Deposits and Reservable Liabilities (FR 2910a) report annually, while those with total deposits less than or equal to $13.3 million are not required to file a deposit report. A depository institution that adjusts reported values on its FR 2910a report in order to qualify for reduced reporting will be shifted to an FR 2900 reporting panel.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.4(f) is revised to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, and the reduced reporting limit has been rounded to the nearest $1 million.

Reservable liability	Reserve requirement
NET TRANSACTION ACCOUNTS:	
$0 to reserve requirement exemption amount ($13.3 million)	0 percent of amount.
Over reserve requirement exemption amount ($13.3 million) and up to low reserve tranche ($89.0 million).	3 percent of amount.
Over low reserve tranche ($89.0 million)	$2,271,000 plus 10 percent of amount over $89.0 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, under delegated authority, October 30, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–26404 Filed 11–4–13; 8:45 am]

BILLING CODE 6210–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2013–0032]

RIN 3170–AA33

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of publication of remittance rule safe harbor list.

SUMMARY: On September 26, 2012, the Bureau of Consumer Financial Protection (Bureau) issued a safe harbor list of countries that qualify for an exception in subpart B of Regulation E, which implements the Electronic Fund Transfer Act, and published this list on its Web site. The Bureau is now publishing the current list, which is unchanged from the prior release, in the **Federal Register**. The Bureau recognizes that the list may change, and it intends to revise the list periodically.

DATES: This list is effective on October 28, 2013. The Bureau will next consider suggestions and input on additions or deletions made on or before March 17th, 2014. However, to facilitate compliance, the Bureau will not remove a country from the list before July 1st, 2014.

ADDRESSES: The Bureau welcomes your input related to whether it has included the appropriate countries and areas on the list. To provide input, please send your feedback and any supporting materials (in English) to:

—*CFPB_CountriesList@cfpb.gov* or

—Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

In general, all comments received will be posted without change to regulations.gov, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg or Lauren Weldon, Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700 or at *CFPB_RemittanceRule@cfpb.gov*. The Bureau also allows interested parties to sign up to receive an alert by email any time the list changes. To receive an alert when the Bureau releases a revised countries list, please sign up for email updates on the Bureau's Web site at *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/*.

SUPPLEMENTARY INFORMATION: The Bureau published its remittance rule on February 7, 2012 (77 FR 6194) implementing section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The remittance rule, which includes several additional revisions and amendments published in the **Federal Register** on July 10, 2012 (77 FR 40459), August 20, 2012 (77 FR 50244), May 22, 2013 (78 FR 30662), and August 14, 2013 (78 FR 49365) (collectively the Final Rule), takes effect on October 28, 2013. Pursuant to the Final Rule, the Bureau determined it would publish a safe harbor list of countries that qualify for an exception in the rule.

That exception permits estimates of certain disclosures in lieu of exact amounts, unless the provider has information that a country's laws, or the method by which transactions are conducted in that country, permits a determination of the exact disclosure amount. The Final Rule, which goes into effect on October 28, 2013, generally requires remittance transfer providers to give consumers sending remittance transfers certain specified disclosures. Among other requirements, a provider generally must disclose the applicable exchange rate, any fees imposed and taxes collected by the provider, and covered third-party fees.[1] In particular circumstances, the Final Rule permits providers to estimate certain amounts that the rule requires them to disclose.

As it relates to this notice, a permanent exception in the Final Rule permits estimates of certain disclosures when, among other circumstances, a remittance transfer provider cannot determine the exact amounts it must disclose at the time the disclosures are required because the laws of the recipient country do not permit such determinations. *See* 12 CFR 1005.32(b)(1)(i)(A).[2] The Bureau stated in the **Federal Register** notice published on February 7, 2012 (77 FR 6194) that it would provide a list of countries that qualify for this permanent exception to facilitate providers' compliance with the rule. The Bureau issued this list on its Web site on September 26, 2012.[3]

The Bureau is now publishing the list in the **Federal Register**. The list is unchanged from the list first released in September 2012.

The current list of countries and other areas contains: Aruba, Brazil, China, Ethiopia and Libya. This list is current as of the date of its publication in the **Federal Register**.

As noted in the Final Rule, the list contains countries and other areas whose laws the Bureau believes, based on its interpretation of the permanent exception and relevant countries' laws,

[1] As described in the Final Rule, the term ''covered third party fees'' includes all fees charged by persons other than the provider except for fees imposed by the designated recipient's institution for receiving a remittance transfer into an account unless the institution acts as an agent of the remittance transfer provider. 12 CFR 1005.30(h)(1).

[2] *See generally* 12 CFR 1005.32 for the Final Rule's provisions on providing estimates for required disclosures.

[3] *Working to Help Industry Understand and Comply with the New Remittance Rule: Countries List and Webinar,* available at: *http://www.consumerfinance.gov/blog/working-to-help-industry-understand-and-comply-with-the-new-remittance-rule-countries-list-and-webinar/* (last visited October 22, 2013).

prevent providers from determining, at the time the required disclosures must be provided, the exact exchange rate on the date of availability for a transfer involving a currency exchange.

The Final Rule explains that a remittance transfer provider may rely on this list, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount. *See* 12 CFR 1005.32(b)(1)(ii) and comment 32(b)(1)–2 (containing examples of when this exception does and does not apply). For example, for transfers to Aruba and Brazil, the Bureau believes that a remittance transfer provider can only rely on the list when the sender funds a transfer in a currency *other than the local currency* (*i.e.,* not the Aruban florin and the Brazilian real, respectively), and the transfer is exchanged into the local currency in the foreign country as opposed to being exchanged in the United States. The Bureau believes that exception is limited to such scenarios because under Brazil's and Aruba's laws the exchange rate is set when a transfer is picked up only where the transfer is funded in a foreign currency and is then exchanged into the local currency in Brazil or Aruba, respectively. In addition to the Bureau's list, the Final Rule permits providers to make their own determinations that the laws of other recipient countries or the method of sending transfers to recipient countries, which are not on the list, do not permit a determination of exact amounts. *See* 12 CFR 1005.32(b)(1)(i).

This list is subject to change. As applicable, the Bureau will publish revisions to the list on its Web site and in the **Federal Register**. To facilitate compliance when the Final Rule goes into effect, the Bureau will not remove any countries on this version of the list before July 1, 2014. Furthermore, if the Bureau believes that it may be appropriate to remove a country or area from the list, the Bureau will provide 90-days advance notice.

The Bureau will next review the list in spring 2014. To have your suggestions or input considered for the Bureau's next review, please send your feedback on whether the Bureau should make changes to the list and any supporting materials (in English) on or before March 17, 2014 to:

—*CFPB_CountriesList@CFPB.gov* or

—Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

To receive an alert when the Bureau releases a revised countries list, please sign up for email updates at *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/*.

Dated: October 24, 2013.

Christopher D'Angelo,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2013–25754 Filed 11–4–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0488; Directorate Identifier 2008–SW–002–AD; Amendment 39–17619; AD 2013–20–13]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bell Model 206B and 206L helicopters. This AD requires installing a placard beneath the engine power dual tachometer and revising the operating limitations section of the rotorcraft flight manual (RFM). This AD was prompted by several incidents of third stage engine turbine wheel failures, which were caused by excessive vibrations at certain engine speeds during steady-state operations. These actions are intended to alert pilots to avoid certain engine speeds during steady-state operations, prevent failure of the third stage engine turbine, engine power loss, and subsequent loss of control of the helicopter.

DATES: This AD is effective December 10, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of December 10, 2013.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 7, 2013, at 78 FR 34280, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Bell Model 206B helicopters, serial number (S/N) 004 through 4675, including helicopters converted from Model 206A and Model 206L helicopters, S/N 45001 through 45153, and 46601 through 46617. The NPRM proposed to require installing a placard on the instrument panel below the NR/N2 dual tachometer and revising the Operating Limitations section of the Model 206B RFM and 206L RFM to limit steady-state operation between speeds of 75% and 88%. The proposed requirements were intended to alert pilots to avoid certain engine speeds during steady-state operations, prevent failure of the third stage engine turbine, engine power loss, and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. CF–2007–13R2, dated November 10, 2009, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada. TCCA issued AD No. CF–2007–13R2 to correct an unsafe condition for certain Model 206B (including those converted from Model 206A) and 206L helicopters. TCCA advises of several failures of third stage turbine wheels used in Rolls Royce 250–C20. According to TCCA, Rolls Royce

has determined that detrimental vibrations can occur within a particular range of turbine speeds, and may be a contributing factor to these failures. Bell has revised the RFM and has provided a corresponding decal to inform pilots to avoid steady-state operations between 75% and 88% turbine speeds.

The TCCA AD requires amending the RFMs, advising pilots of the change, and installing a decal as described in Bell Alert Service Bulletin (ASB) No. 206–07–115, Revision C, dated February 4, 2009, for Model 206B helicopters (ASB 206–07–115) and Bell ASB No. 206L–07–146, Revision B, dated March 3, 2009, for Model 206L helicopters (ASB 206L–07–146).

Comments

After our NPRM (78 FR 34280, June 7, 2013) was published, we received comments from one commenter.

Request

Rolls-Royce Corporation requested that in addition to requiring the placard on the instrument panel, we allow operators the option to temporarily mark the N_r/N_p gauge with colored tape, to provide a more visual aide to the pilot for the speed avoidance zone.

We disagree. Marking the glass surface of the gauge can create parallax issues when viewing the avoidance ranges on the gauge, resulting in erroneous readings.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCCA, its technical representative, has notified us of the unsafe condition described in the TCCA AD. We are issuing this AD because we evaluated all information provided by TCCA, reviewed the relevant information, considered the comment received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the TCCA AD

The TCCA AD requires compliance within 10 calendar days, while this AD requires compliance within 30 days.

Related Service Information

Bell has issued ASB 206–07–115 and ASB 206L–07–146, which contain procedures for installing a placard on the instrument panel below the main rotor RPM (Nr)/power turbine RPM (N2) dual tachometer and for inserting the RFM changes into the flight manual.

Costs of Compliance

We estimate that this AD will affect 970 helicopters of U.S. Registry. Based on an average labor rate of $85 per hour, we estimate that operators will incur the following costs in order to comply with this AD. Amending the RFM will require about 0.5 work-hour, for a cost per helicopter of about $43 and a cost to U.S. operators of $41,710. Installing the decal will require about 0.2 work-hour and required parts will cost $20, for a cost per helicopter of $37 and a cost to U.S. operators of $35,890. Based on these estimates, the total cost of this AD is $80 per helicopter and $77,600 for the U.S. operator fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–20–13 Bell Helicopter Textron Canada Limited (Bell): Amendment 39–17619; Docket No. FAA–2013–0488; Directorate Identifier 2008–SW–002–AD.

(a) Applicability

This AD applies to the following helicopters, certificated in any category:

(1) Bell Model 206B, serial number (S/N) 004 through 4675, including helicopters converted from Model 206A; and

(2) Bell Model 206L, S/N 45001 through 45153, and 46601 through 46617.

(b) Unsafe Condition

This AD defines the unsafe condition as a third stage turbine vibration, which could result in turbine failure, engine power loss, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective December 10, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 30 days:

(1) For Model 206B helicopters:

(i) Revise the Operating Limitations section of the Model 206B Rotorcraft Flight Manual (RFM) by inserting Section 1, Operating Limitations, page 1–2A, of Bell BHT–206B–FM–1, revision B–50, dated December 8, 2008.

(ii) Remove placard part number (P/N) 230–075–213–121, if installed.

(iii) Install placard P/N 230–075–213–125, or equivalent, on the instrument panel directly below the dual tachometer.

(2) For Model 206L helicopters:

(i) Revise the Operating Limitations section of the Model 206L RFM by inserting Section 1, Operating Limitations, page 1–4B, of Bell BHT–206L–FM–1, revision 28, dated December 8, 2008.

(ii) Remove placard P/N 230–075–213–123, if installed.

(ii) Install placard P/N 230–075–213–127, or equivalent, on the instrument panel below the dual tachometer.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Bell Alert Service Bulletin (ASB) No. 206–07–115, Revision C, dated February 4, 2009, and Bell ASB No. 206L–07–146, Revision B, dated March 3, 2009, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation (TCCA) AD No. CF–2007–13R2, dated December 9, 2009. You may view the TCCA AD on the internet in the AD Docket at *http://www.regulations.gov.*

(h) Subject

Joint Aircraft Service Component (JASC) Code: 7250: Turbine Section.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Page 1–2A of Section 1, Operating Limitations, of Bell Rotorcraft Flight Manual BHT–206B–FM–1, Revision B–50, dated December 8, 2008.

(ii) Page 1–4B of Section 1, Operating Limitations, of Bell Rotorcraft Flight Manual BHT–206L–FM–1, Revision 28, dated December 8, 2008.

(3) For Bell service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 25, 2013.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–24037 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0328; Directorate Identifier 2012–NM–184–AD; Amendment 39–17643; AD 2013–22–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–10–06 for certain The Boeing Company Model 747–400 and –400D series airplanes. AD 2009–10–06 required repetitive inspections to detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and corrective actions if necessary; and repetitive post-repair and post-modification inspections, and corrective actions if necessary. This new AD adds repetitive inspections of Section 44 upper deck floor beam upper chords, and corrective actions if necessary; repetitive post-repair and post-modification inspections, and corrective actions if necessary; and replacement of the upper deck floor beam upper chords. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain upper chords of the upper deck floor beam are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

DATES: This AD is effective December 10, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 10, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 17, 2009 (74 FR 22424, May 13, 2009).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009). AD 2009–10–06 applied to the specified products. The NPRM published in the **Federal Register** on

April 16, 2013 (78 FR 22435). The NPRM proposed to continue to require repetitive inspections to detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and corrective actions if necessary; and repetitive post-repair and post-modification inspections, and corrective actions if necessary. The NPRM also proposed to add repetitive inspections of Section 44 upper deck floor beam upper chords, and corrective actions if necessary; repetitive post-repair and post-modification inspections, and corrective actions if necessary; and replacement of the upper deck floor beam upper chords.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 22435, April 16, 2013) and the FAA's response to each comment.

Request To Eliminate Duplicate Reference to Post-Repair and Post-Modification Repetitive Inspections

Boeing requested that we delete the reference to post-repair and post-modification repetitive inspections from paragraph (g) of the NPRM (78 FR 22435, April 16, 2013). Boeing stated that the post-repair and post-modification inspections are required by paragraph (i) of the NPRM, and need to be deleted from paragraph (g) of the NPRM to avoid confusion.

We agree to remove the duplicate reference to post-repair and post-modification repetitive inspections from paragraph (g) of this final rule. We have changed paragraph (g) of this final rule accordingly.

Request To Revise the Heading and Clarify Paragraph (k) of the NPRM (78 FR 22435, April 16, 2013)

Boeing requested that we revise the heading of paragraph (k) of the NPRM (78 FR 22435, April 16, 2013) to clarify that the modification specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, is not new and is not fully terminating. Boeing also requested that we add text concerning terminating inspections required by paragraphs (g) and (j) of the NPRM, and also for the resumption of inspections required by paragraphs (i) and (l) of the NPRM.

We agree with the request. We have revised the heading of paragraph (k) of this final rule to ''New Terminating Action for Certain Conditions.'' We also agree with adding text to paragraph (k) of this final rule to clarify which modifications or repairs as modifications terminate which inspections required by this final rule. We have revised paragraph (k) of this final rule to add new paragraph (k)(1) to this final rule to specify that, for Section 41, doing a hole modification or repair as a hole modification, in accordance with ''Part 2—Section 41—Repair,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, terminates the repetitive inspections specified in paragraph (g) of this final rule. We have also included clarification in paragraph (k)(1) of this final rule to indicate that the repetitive inspections specified in paragraph (i) of this final rule must be done.

We have also moved the content of paragraph (k) of the NPRM (78 FR 22435, April 16, 2013) to new paragraph (k)(2) of this final rule to specify that, for Section 44, doing a hole modification or repair as a hole modification, in accordance with ''Part 5—Section 44—Repair,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, terminates the repetitive inspections specified in paragraph (j) of this final rule. We have also included clarification in paragraph (k)(2) of this final rule to indicate that the repetitive inspections specified in paragraph (l) of this final rule must be done.

Request To Restart Inspections After Replacement of Upper Deck Floor Beam Upper Chords

Boeing requested that we revise paragraph (m) of the NPRM (78 FR 22435, April 16, 2013) to add a note concerning the new inspection threshold, equal to the original threshold, to restart inspections after replacement of the upper deck floor beam upper chords. Boeing stated that paragraph (m) of the NPRM requires the replacement of upper deck floor beam upper chords in Sections 41 and 44, as given in Table 5 of Boeing Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Boeing stated that the new inspection threshold needs to be provided in paragraph (m) of this NPRM.

We agree with the request to include a relieving compliance time for the inspections required by this final rule for airplanes on which the upper deck floor beam upper chords are replaced. Paragraphs (g), (i), (j), and (l) of this final rule require repetitive inspections at the applicable times specified in Tables 1 through 4 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. However, Boeing Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, does not specify that accomplishing the replacement terminates the repetitive inspections, nor does it provide a longer compliance time for the next inspection done after accomplishing the replacement. We also agree that the next inspection after accomplishing the replacement may be done within 20,000 flight cycles. We have determined that this compliance time will provide an adequate level of safety. We have revised paragraph (m) of this final rule to add the first interval for the repetitive inspections required by this final rule for airplanes on which a replacement required by paragraph (m) of this final rule is done.

Request To Add References to Paragraph (n)(1) of the NPRM (78 FR 22435, April 16, 2013)

Boeing requested that we revise paragraph (n)(1) of the NPRM (78 FR 22435, April 16, 2013) to refer to paragraphs (j) and (l) of the NPRM. Boeing stated that since paragraph (n) of the NPRM is referring to new exceptions, it should refer to cracks found as part of the new inspections specified in paragraph (i), (j), or (l) of the NPRM (reference Compliance Tables 2, 3, or 4 of Boeing Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012).

We partially agree with the request. We have added a reference to paragraph (j) of this final rule in paragraph (n)(1) of this final rule. Paragraph (j) of this final rule already references paragraph (n)(1) of this final rule as an exception. However, we do not agree to add a reference to paragraph (l) of this final rule in paragraph (n)(1) of this final rule, because paragraph (l) of this final rule does not include a reference to the service information for the corrective action. Paragraph (l) of this final rule specifies to refer to the procedures in paragraph (p) of this final rule for airplanes on which any cracking is found.

Request To Allow Boeing Organization Designation Authorization (ODA) Approval

Boeing requested we revise paragraph (n)(3) of the NPRM (78 FR 22435, April 16, 2013) to allow the full provisions of Boeing ODA approval. Boeing stated that alternative method of compliance (AMOC) approval provisions allowed in paragraph (p) of the NPRM should apply to all sections of the NPRM.

We disagree. Paragraph (p)(3) of this final rule already allows for ODA

approval of repairs. We have not changed this final rule in this regard. However, we have revised paragraph (n)(3) of this final rule to clarify where the service information specifies to contact the FAA, operators must contact the Seattle Aircraft Certification Office (ACO).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 22435, April 16, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 22435, April 16, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 84 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection (retained actions from AD 2009–10–06, Amendment 39-15901 (74 FR 22424, May 13, 2009)).	Up to 50 work-hours × $85 per hour = Up to $4,250 per inspection cycle.	$0	Up to $4,250 per inspection cycle.	Up to $357,000 per inspection cycle.
Inspection (new action)	259 work-hours × $85 per hour = $22,015 per inspection cycle.	0	$22,015 per inspection cycle	$1,849,260 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the repair or modification specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), and adding the following new AD:

2013–22–11 The Boeing Company: Amendment 39–17643; Docket No. FAA–2013–0328; Directorate Identifier 2012–NM–184–AD.

(a) Effective Date

This AD is effective December 10, 2013.

(b) Affected ADs

This AD supersedes AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and –400D series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that certain upper chords of the upper deck floor beam are subject to widespread fatigue damage (WFD). We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could become large and cause the floor beams to become severed and result in rapid decompression or reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspections and Corrective Actions With Revised Service Information and Compliance Times

This paragraph restates the actions required by paragraph (g) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), with revised service information and compliance times. Except as required by paragraphs (h)(1) and (h)(2) of this AD: At the applicable times in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, do an inspection (open-hole or surface high frequency eddy current (HFEC)) to

detect cracks in the floor panel attachment fastener holes of the Section 41 upper deck floor beam upper chords, and do applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008; or Revision 1, dated September 19, 2012. Repeat the inspections thereafter at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, except as required by paragraphs (i) and (m) of this AD. As of the effective date of this AD, use only Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, to accomplish the actions in this paragraph.

(h) Retained Exceptions

(1) This paragraph restates the exception stated in paragraph (h) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009). If any crack is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008; or Revision 1, dated September 19, 2012; specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) This paragraph restates the exception stated in paragraph (i) of AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009). Where Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after June 17, 2009 (the effective date of AD 2009–10–06).

(i) Inspections and Corrective Actions for Airplanes on Which a Repair or Modification Is Done (for Section 41)

For airplanes on which a repair or modification identified in Table 2 of 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, has been done: At the times specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(3) of this AD, do open-hole and surface HFEC inspections, as applicable, for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Repeat at the applicable intervals specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. If any cracking is found in the repaired or modified locations, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(j) New Inspections and Repair

For Group 1 airplanes identified in Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as specified in paragraph (n)(2) of this AD, do an open-hole or surface HFEC inspection to detect cracking in the floor panel attachment fastener holes of the Section 44 upper deck floor beam upper chords, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(1) of this AD. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as provided by paragraph (m) of this AD. Do all applicable corrective actions before further flight.

(k) New Terminating Action for Certain Conditions

(1) For Section 41: Doing a hole modification or repair as a hole modification, in accordance with ''Part 2—Section 41—Repair,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, terminates the repetitive inspections specified in paragraph (g) of this AD. However, the repetitive inspections specified in paragraph (i) of this AD must be done.

(2) For Section 44: Doing a hole modification or repair as a hole modification, in accordance with ''Part 5—Section 44—Repair,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, terminates the repetitive inspections specified in paragraph (j) of this AD. However, the repetitive inspections specified in paragraph (l) of this AD must be done.

(l) New Inspections and Corrective Actions for Airplanes on Which a Repair or Modification Is Done (for Section 44)

For airplanes on which a repair or modification specified in the ''Condition'' column of Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, has been done: At the times specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, except as required by paragraph (n)(3) of this AD, do open hole and surface HFEC inspections, as applicable, for cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Repeat at the applicable intervals specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. If any cracking is found in the repaired or modified locations, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(m) New Replacement and Post-Replacement Inspections

At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012: Replace Section 41 and 44 upper deck floor beam upper chords, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012. Repeat the inspections required by paragraphs (g) and (j) of this AD within 20,000 flight cycles after doing the replacement. Thereafter, repeat the inspection required by paragraphs (g) and (j) of this AD at the times specified in paragraphs (g) and (j) of this AD.

(n) New Exceptions

(1) If any crack is found during any inspection required by paragraph (i), (j), or (l) of this AD, and Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

(2) Where Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies a compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Table 2 or Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012, specifies to contact Boeing for inspections and compliance times: Before further flight, contact the Manager, FAA, Seattle Aircraft Certification Office (ACO), for inspections and compliance times and accomplish the inspections at the given times.

(o) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008.

(p) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (q)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet

the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2009–10–06, Amendment 39–15901 (74 FR 22424, May 13, 2009), are approved as AMOCs for the corresponding actions of this AD.

(q) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

(2) Service information that is not incorporated by reference in this AD may be obtained at the addresses identified in paragraph (r)(5) of this AD.

(r) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on December 10, 2013.

(i) Boeing Alert Service Bulletin 747–53A2688, Revision 1, dated September 19, 2012.

(ii) Reserved.

(4) The following service information was approved for IBR on June 17, 2009 (74 FR 22424, May 13, 2009).

(i) Boeing Alert Service Bulletin 747–53A2688, dated August 21, 2008.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 17, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–25950 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0868; Directorate Identifier 2013–NM–194–AD; Amendment 39–17650; AD 2013–22–18]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final Rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires repetitive detailed inspections to detect discrepancies on the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, and, if no discrepancy is found, a check to make sure the bolts are tight, and replacement of the attaching parts if necessary. This AD also provides an option to accomplish the replacement of the attaching parts, which terminates the repetitive inspections. This AD was prompted by reports of failure of the bolts that connect the lower eyelet fitting of the cockpit windshield center-post to the forward fuselage. We are issuing this AD to detect and correct failed bolts and attaching parts of the lower eyelet fitting of the cockpit windshield center-post, which could lead to loss of structural integrity of the airplane.

DATES: This AD becomes effective November 20, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 20, 2013.

We must receive comments on this AD by December 20, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Mandatory Continuing Airworthiness Information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Emergency Airworthiness Directive 2013–10–01, effective October 3, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [Brazilian] EAD [emergency AD] was prompted by reports of failure of the bolts that connect the lower eyelet fitting of the cockpit windshield center-post to the forward fuselage. We are issuing this EAD to detect failed bolts and correct the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, which could lead to loss of structural integrity of the airplane.

Required actions include repetitive detailed inspections to detect discrepancies on the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, and if no discrepancy is found, a check to make sure the bolts are tight, and replacement of the attaching parts if necessary. This AD also provides an option to replace the attaching parts, which terminates the repetitive inspections. The replacement includes doing a general visual inspection for damage on the eyelet fitting if any discrepancy is found in any bolts and repair if necessary. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0868.

Relevant Service Information

Embraer has issued Service Bulletin 145–53–0082, dated October 18, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, this AD requires that the repair approval specifically refer to this FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or by the DAH with State of Design Authority design organization approval, as applicable'' in this AD to refer to an DAH authorized to approve required repairs for this AD.

Differences Between This AD and the MCAI or Service Information

The MCAI includes a requirement to replace the attaching parts of the lower eyelet fitting of the cockpit windshield center-post within 6,000 flight cycles. However, the planned compliance time for the replacement would allow enough time to provide notice and opportunity for prior public comment on the merits of the replacement. Therefore, we have included that action as an optional action in paragraph (i) of this AD, which will terminate the inspections required by this AD. We might propose further rulemaking to require the replacement.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failed bolts and attaching parts of the lower eyelet fitting of the cockpit windshield center-post could lead to loss of structural integrity of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0868; Directorate Identifier 2013–NM–194–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 624 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections/Checks	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle	$159,120 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspections/checks. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	34 work-hours × $85 per hour = $2,890	$386	$3,276

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–22–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–17650. Docket No. FAA–2013–0868; Directorate Identifier 2013–NM–194–AD.

(a) Effective Date

This AD becomes effective November 20, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category, as identified in EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports of failure of the bolts that connect the lower eyelet fitting of the cockpit windshield center-post to the forward fuselage. We are issuing this AD to detect and correct failed bolts and attaching parts of the lower eyelet fitting of the cockpit windshield center-post, which could lead to loss of structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Repetitive Inspections

(1) For Group 1 airplanes, as identified in EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013: At the applicable compliance time specified in paragraph (g)(1)(i), (g)(1)(ii), (g)(1)(iii), or (g)(1)(iv) of this AD, do a detailed inspection to detect discrepancies on the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, and if no discrepancy is found, before further flight, do a check to make sure the bolts are tight, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013. Repeat the actions required by this paragraph thereafter at intervals not to exceed 500 flight cycles until the accomplishment of the replacement required by paragraph (h) of this AD or the optional terminating action specified in paragraph (i) of this AD.

(i) For airplanes with 11,000 total flight cycles or more as of the effective date of this AD: Do the inspection within 50 flight cycles after the effective date of this AD.

(ii) For airplanes with 10,000 total flight cycles or more but fewer than 11,000 total flight cycles as of the effective date of this AD: Do the inspection before the accumulation of 11,050 total flight cycles, or within 150 flight cycles after the effective date of this AD, whichever occurs first.

(iii) For airplanes with 7,500 total flight cycles or more but fewer than 10,000 total flight cycles as of the effective date of this AD: Do the inspection before the accumulation of 10,150 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs first.

(iv) For airplanes with fewer than 7,500 total flight cycles as of the effective date of this AD: Do the inspection before the accumulation of 8,000 total flight cycles, or within 5,000 flight cycles after the effective date of this AD, whichever occurs first.

(2) For Group 2 airplanes, as identified in EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013 (airplanes on which the actions specified in EMBRAER Service Bulletin 145–53–0058, dated December 23, 2004; or Revision 01, dated March 30, 2007; have been done): At the applicable compliance time specified in paragraph (g)(2)(i), (g)(2)(ii), (g)(2)(iii), or (g)(2)(iv) of this AD, do a detailed inspection to detect discrepancies on the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, and if no discrepancy is found, before further flight, do a check to make sure the bolts are tight, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013. Repeat the actions required by this paragraph thereafter at intervals not to exceed 500 flight cycles until the accomplishment of the requirements of paragraph (h) of this AD or the optional terminating action specified in paragraph (i) of this AD.

(i) For airplanes that, as of the effective date of this AD, have accumulated 11,000 flight cycles or more since the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058: Do the inspection

within 50 flight cycles after the effective date of this AD.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 10,000 flight cycles or more but fewer than 11,000 flight cycles since the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058: Do the inspection within 11,050 flight cycles after the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058, or within 150 flight cycles after the effective date of this AD, whichever occurs first.

(iii) For airplanes that, as of the effective date of this AD, have accumulated 7,500 flight cycles or more but fewer than 10,000 flight cycles since the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058: Do the inspection within 10,150 flight cycles after the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058, or within 500 flight cycles after the effective date of this AD, whichever occurs first.

(iv) For airplanes that, as of the effective date of this AD, accumulated fewer than 7,500 flight cycles since the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058: Do the inspection within 8,000 flight cycles after the incorporation of the actions specified in EMBRAER Service Bulletin 145–53–0058, or within 5,000 flight cycles after the effective date of this AD, whichever occurs first.

(h) Corrective Actions

If, during any inspection required by paragraph (g) of this AD, any discrepancy is found or if, during any check required by paragraph (g) of this AD, any bolt is found that is not tight, before further flight, do the replacement of the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, including doing a general visual inspection for damage on the eyelet fitting; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013. If any damage to the eyelet fitting is found, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC) (or its delegated agent, or by the Design Approval Holder (DAH) with ANAC design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Optional Terminating Action

For Group 1 airplanes, and Group 2 airplanes (airplanes on which the actions specified in EMBRAER Service Bulletin 145–53–0058, dated December 23, 2004; or Revision 01, dated March 30, 2007; have been done), as identified in EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013: Doing the replacement of the attaching parts of the lower eyelet fitting of the cockpit windshield center-post, including doing a general visual inspection for damage on the eyelet fitting if any discrepancy is found in any bolts, terminates the inspections required by paragraph (g) of this AD. The replacement specified in this paragraph must be done in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013, except as required by paragraph (j) of this AD.

(j) Service Information Exception

Where EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013, specifies to contact Embraer if there are signs of damage on the eyelet fitting, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC (or its delegated agent, or by the DAH with ANAC design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions specified in paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using EMBRAER Alert Service Bulletin 145–53–A082, dated September 22, 2013; or EMBRAER Alert Service Bulletin 145–53–A082, Revision 01, dated September 26, 2013; which are not incorporated by reference in this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the Design Approval Holder with a State of Design Authority's design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Emergency Airworthiness Directive 2013–10–01, effective October 3, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0868.

(2) Service information identified in this AD that is not incorporated by reference may be obtained at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) EMBRAER Service Bulletin 145–53–0082, dated October 18, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 25, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26323 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No.: FAA–2013–0780; Amdt. No. 61–131]

RIN 2120–AK23

Certified Flight Instructor Flight Reviews; Recent Pilot in Command Experience; Airmen Online Services; Confirmation of Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of the direct final rule published on September 16, 2013, and responds to the comments received on that direct final rule. The rule permits an airman who passes a practical test for issuance of a flight instructor certificate, a practical test for the addition of a rating to a flight instructor certificate, a practical test for renewal of a flight instructor certificate, or a practical test for the reinstatement of a flight instructor certificate to meet the 24-calendar month flight review requirements. This rule also clarifies that the generally applicable recent flight experience requirements do not apply to a pilot in command who is employed by a commuter or on-demand operator if the pilot in command is in compliance with the specific pilot in command qualifications and recent experience requirements for that commuter or on-demand operator. Finally, this rule permits replacement airman and medical certificates to be requested online, or by any other method acceptable to the Administrator. These changes relieve regulatory burdens and clarify existing regulations.

DATES: The direct final rule published September 16, 2013, at 78 FR 56822, becomes effective on November 15, 2013.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Allan G. Kash, Airmen Certification and Training Branch, Flight Standards Service, AFS–810, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–9621; email *allan.g.kash@faa.gov*.

For legal questions concerning this action, contact Anne Moore, Office of the Chief Counsel—International Law, Legislation, and Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3123; email *anne.moore@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background and Discussion of the Direct Final Rule

Flight Review

The purpose of the flight review is to provide for a regular assessment of pilot skills and aeronautical knowledge. When the requirement was first introduced, the FAA stated that the flight review would assure that every pilot would have a qualified individual comment on his or her competency at least once every two years, as discussed in 38 FR 3156 (February 1, 1973).

Section 61.56 sets forth certain exceptions to the requirement for a pilot to accomplish a flight review. Among these exceptions, a person who has, within the prescribed 24-month period, ''passed a pilot proficiency check conducted by an FAA examiner, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege,'' need not accomplish the required flight review required by § 61.56(d). In addition, pilots employed by a part 119 certificate holder conducting operations under part 121 and part 135 receive recurring training and proficiency checks, conducted by an FAA examiner or approved pilot check airman provided by their employer, which exceed the requirements of a flight review.

Industry advocacy groups indicated they believed that the flight instructor certification covers much more than the regulatory requirements of a flight review. These groups indicated support for amendment of the regulations to allow for a flight instructor practical test to be included as an exception to completing a flight review. As discussed further in the direct final rule, the FAA agreed with this view. The direct final rule published September 16, 2013, modified § 61.56(d) to allow an airman who passes a practical test for issuance of a flight instructor certificate, a practical test for the addition of a rating to a flight instructor certificate, a practical test for renewal of a flight instructor certificate, or a practical test for the reinstatement of a flight instructor certificate to meet the flight review requirements of 14 CFR part 61.

Recent Flight Experience

Section 61.57 sets forth the recent flight experience requirements to act as pilot in command of an aircraft. Section 61.57(e)(2) states that this section does not apply ''to a pilot in command who is employed by an air carrier certificated under part 121 or 135 and is engaged in a flight operation under part 91, 121, or 135 for that air carrier if the pilot is in compliance with'' the pilot-in-command requirements in § 121.435 or § 121.436, as applicable, and § 121.439 or §§ 135.243 and 135.247, as appropriate. The FAA received several requests for clarification of whether, under the specific language of § 61.57(e)(2), the exception applies only to a pilot in command employed by the holder of a part 119 air carrier certificate or whether it also extends to a pilot in command employed by the holder of a part 119 operating certificate.

When the FAA first proposed this exception to the recent flight experience requirements in § 61.57, it stated that the intention was to provide relief from ''essentially redundant recency requirements'' for part 121 and part 135 operators and their pilots in command (59 FR 56385, November 14, 1994). In that final rule, then-§ 61.57(f) stated that the recent flight experience requirements in part 61 did not apply ''to a pilot in command, employed by a 14 CFR part 121 or part 135 operator, engaged in flight operations under 14 CFR part 91, 121, or 135 for that operator.'' The FAA refined the language in a 1997 final rule and, in doing so, introduced the term ''air carrier'' in place of the term ''operator'' (62 FR 16220, April 7, 1997).

The FAA did not intend to limit the exception to pilots employed by air carriers operating in parts 121 and 135. The FAA intended to include any pilot in command who is employed by a part 119 certificate holder authorized to conduct operations under part 121 or part 135 when the pilot is engaged in operations under parts 91, 121, or 135 for that certificate holder if the pilot in command is in compliance with §§ 121.435 or 121.436, as applicable, and § 121.439 or §§ 135.243 and 135.247, as appropriate.

Consequently, in the direct final rule published September 16, 2013, the FAA amended the language in § 61.57(e) to make clear that the recent flight experience requirements of that section do not apply to a pilot in command who is employed by the holder of an operating certificate that is conducting operations under part 121 or part 135 if the pilot in command is also in compliance with § 121.435 or § 121.436, as applicable, and § 121.439, or §§ 135.243 and 135.247, as appropriate.

Airmen Online Services

In the case of a lost or destroyed airman or medical certificate, § 61.29(a) and (b) permit a pilot to request the replacement of a lost or destroyed airman certificate issued under part 61. Replacement airman certificates may be requested by letter to the Department of Transportation, FAA, Airmen Certification Branch, and replacement medical certificates may be requested by letter to the Department of Transportation, FAA, Aerospace Medical Certification Division.

Although current regulations recognize requests for replacement certificates only by letter, the FAA has established Airmen Online Services

through which a pilot can request a replacement airman certificate or obtain a document that provides temporary authority to exercise the privileges of an airman certificate by facsimile or through internet download at the FAA Web site: *http://www.faa.gov/licenses_certificates/airmen_certification/certificate_replacement/*. The use of Airmen Online Services is not addressed or recognized in § 61.29. Therefore, in the direct final rule published September 16, 2013, the FAA amended the language in § 61.29 to reflect the use of Airmen Online Services or any method acceptable to the FAA for the purpose of obtaining a replacement certificate or 60-day authority to exercise the privileges of a lost or stolen certificate.

The FAA also revised § 61.3 to clarify that temporary documents issued under § 61.29(e) are acceptable for meeting the § 61.3 requirement that a pilot have his or her pilot certificate and medical certificate in the person's physical possession when serving as a required flightcrew member.

Discussion of Comments

The FAA received 7 comments to the direct final rule. All commenters supported the rule as published. Commenters supported the regulatory changes, noting that they would relieve burdens for the regulated community, and would potentially reduce costs for certified flight instructors.

Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, the direct final rule published September 16, 2013 at 78 FR 56822, Amendment No. 61–131, will become effective November 15, 2013.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal at *http://www.regulations.gov*;
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on December 31, 2013.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2013–26472 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

[Docket No. FDA–2013–N–0002]

New Animal Drugs; Afoxolaner; Carprofen; Ceftiofur Hydrochloride; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during September 2013. FDA is also informing the public of the availability of summaries on the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect a change of sponsorship for an ANADA.

DATES: This rule is effective November 5, 2013.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during September 2013, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the Internet may obtain these documents at the Center for Veterinary Medicine FOIA Electronic Reading Room: *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofFoods/CVM/CVMFOIAElectronicReadingRoom/default.htm.*

In addition, Piedmont Animal Health, 204 Muirs Chapel Rd., suite 200, Greensboro, NC 27410 has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–555 for LIBREVIA (carprofen) Soft Chewable Tablets to Bayer HealthCare LLC, Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201. Accordingly, the Agency is amending the regulations to reflect this change of sponsorship.

Following this change of sponsorship, Piedmont Animal Health is no longer a sponsor of an approved NADA. Accordingly, FDA is amending 21 CFR 510.600 to remove the entries for this firm.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING SEPTEMBER 2013

NADA/ ANADA	Sponsor	New animal drug product name	Action	21 CFR Section	FOIA Summary	NEPA Review
141–406 ...	Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640.	NEXGARD (afoxolaner), Chewable Tablets.	Original approval for the treatment and prevention of flea infestations, and the treatment and control of American dog tick infestations in dogs.	520.43	yes	CE [1] [2].
095–735 ...	Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	RUMENSIN (monensin). Type A medicated article.	Supplement extending the lower dose limit of monensin medicated feed for pasture cattle from 25 grams per ton (g/ton) to 15 g/ton.	558.355	yes	CE [1] [3].
141–288 ...	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	EXCENEL RTU EZ (ceftiofur hydrochloride), Injectable Suspension.	Supplemental approval of a reformulated product for use in cattle and swine, addition of an intramuscular route of injection in cattle, change in withdrawal period for cattle, and addition of a warning statement.	522.313b	yes	CE [1] [4].

[1] The Agency has determined under 21 CFR 25.33 that this action is categorically excluded (CE) from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.
[2] CE granted under 21 CFR 25.33(d)(1).
[3] CE granted under 21 CFR 25.33(a)(1).
[4] CE granted under 21 CFR 25.33(a)(3).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''Piedmont Animal Health''; and in the table in paragraph (c)(2), remove the entry for ''058147''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§§ 520.44, 520.45, 520.45a, and 520.45b [Redesignated as §§ 520.28, 520.38, 520.38a, and 520.38b]

■ 4. Redesignate §§ 520.44, 520.45, 520.45a, and 520.45b as §§ 520.28, 520.38, 520.38a, and 520.38b, respectively.

■ 5. Add § 520.43 to read as follows:

§ 520.43 Afoxolaner.

(a) *Specifications.* Each chewable tablet contains 11.3, 28.3, 68, or 136 milligrams (mg) afoxolaner.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer orally once a month at a minimum dosage of 1.14 mg/pound (lb) (2.5 mg/kilogram (kg)).

(2) *Indications for use.* For the treatment and prevention of flea infestations (*Ctenocephalides felis*), and the treatment and control of American dog tick (*Dermacentor variabilis*) infestations in dogs and puppies 8 weeks of age and older, weighing 4 pounds of body weight or greater, for 1 month.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.309 [Amended]

■ 6. In paragraph (b)(2) of § 520.309, remove ''Nos. 000115, 055529, 058147, and 062250'' and in its place add ''Nos. 000115, 000859, 055529, and 062250''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 7. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 8. In 522.313b, revise paragraphs (b), (d), (e)(2)(i), and (e)(2)(iii) to read as follows:

§ 522.313b Ceftiofur hydrochloride.

* * * * *

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

* * * * *

(d) *Special considerations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits extra-label use of this drug in cattle and swine for disease prevention purposes; at unapproved doses, frequencies, durations, or routes of administration; and in unapproved major food-producing species/ production classes.

(e) * * *

(2) * * *

(i) *Amount.* Administer by subcutaneous or intramuscular injection as follows:

(A) For bovine respiratory disease and acute bovine interdigital necrobacillosis: 1.1 to 2.2 mg/kg of body weight at 24-hour intervals for 3 to 5 consecutive days.

(B) For bovine respiratory disease: 2.2 mg/kg of body weight administered twice at a 48 hour interval.

(C) For acute metritis: 2.2 mg/kg of body weight at 24-hour intervals for 5 consecutive days.

* * * * *

(iii) *Limitations.* Treated cattle must not be slaughtered for 4 days following the last treatment. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 9. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

■ 10. In § 558.355, in the introductory text in paragraph (f)(3)(iii), remove ''Monensin, 25 to 400 grams'' and in its place add ''Monensin, 15 to 400 grams''.

Dated: October 31, 2013.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2013–26473 Filed 11–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0901]

Drawbridge Operation Regulations; Reynolds Channel, Lawrence, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel, at Lawrence, New York. This temporary deviation authorizes the Atlantic Beach Bridge to operate under an alternate schedule for 29 days, to complete bridge rehabilitation.

DATES: This deviation is effective from December 2, 2013 through December 31, 2013.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2013–0901 and are available online at *www.regulations.gov,* inserting USCG–2013–0901 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Atlantic Beach Bridge, across Reynolds Channel, mile 0.4, at Lawrence, New York, has a vertical clearance in the closed position of 25 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(e).

A temporary deviation for the drawbridge operations (78 FR 56610) is currently in effect. During ongoing rehabilitation of the bridge the contractor discovered more severe damage than originally anticipated, resulting from Super Storm Sandy in 2012. The owner of the bridge, Nassau County Bridge Authority, is requesting additional bridge closures in order to complete the bridge rehabilitation.

The waterway has commercial and seasonal recreational vessels of various sizes.

Under this temporary deviation the draw of the Atlantic Beach Bridge at mile 0.4, across Reynolds Channel shall operate as follows:

From December 2, 2013 through December 31, 2013, the bridge shall operate a single span on signal at 6 a.m., 12 p.m., 4 p.m., and 8 p.m. and at any time between 8 p.m. and 6 a.m. The draw shall open both spans at all times for commercial vessel traffic after at least a 48 hour advance notice is given by calling the number posted at the bridge. The draw may remain in the closed position between 12 a.m. and 5 a.m. on December 3, and December 4, 2013.

The Coast Guard contacted all known commercial waterway users regarding this deviation and no objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 21, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–26517 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0910]

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the draw of the Norfolk Southern #5 Railroad Bridge, across the Elizabeth River Eastern Branch, mile 1.1, at Norfolk, VA. This deviation is necessary to facilitate replacing the broken tread plates and milling the top of the plates and webs to create a flat surface on the Norfolk Southern #5 Railroad drawbridge. The final phase of repairs is shimming the tread plates into place. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from November 5, 2013 through December 8, 2013, and has been enforced with actual notice since November 4, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0910] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mrs. Kashanda Booker, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6227, email *Kashanda.l.booker@uscg.mil.* If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, who owns and operates this drawbridge, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.5 to facilitate thermite welding on the rails.

Under the regular operating schedule, the Norfolk Southern #5 Railroad Bridge, mile 1.1, in Norfolk, VA, the draw must open promptly and fully for the passage of vessels when a request or signal to open is given. The draw normally is open and only closes for train crossings or periodic maintenance. The Norfolk Southern #5 railroad Bridge, at mile 1.1, across the Elizabeth River (Eastern Branch) in Norfolk, VA, has a vertical clearance in the closed position to vessels of 6 feet above mean high water.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position each day, from 7 a.m. to 5 p.m., on November 4, 2013 until December 8, 2013 the bridge will operate under normal operating schedule at all other times. The bridge normally is maintained in the open-to-navigation position with several vessels transiting a week and only closes when trains transit. Emergency openings cannot be provided. There are no alternate routes for vessels transiting this section of the Elizabeth River Eastern Branch but vessels may pass before 7 a.m. and after 5 p.m.

The Elizabeth River Eastern Branch is used by a variety of vessels including military, tug, commercial, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with these waterway users. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. Mariners able to pass under the bridge in the closed position may do so at any time and are advised to proceed with caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 21, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–26533 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0909]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the I64 Bridge across the Atlantic Intracoastal Waterway, South Branch of the Elizabeth River, mile 7.1, at Chesapeake, VA. This deviation is necessary to facilitate maintenance work on the rotary span limit switches. This temporary deviation allows the drawbridge to remain in the closed to navigation position.

DATES: This deviation is effective from 7 a.m. on November 15, 2013 to 12 p.m. November 17, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0909] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mrs. Kashanda Booker, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6227, email *Kashanda.l.booker@uscg.mil.* If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates this drawbridge, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.997(e), to facilitate maintenance of the moveable spans on the structure.

The current operating schedule for the drawbridge is set out in 33 CFR 117.997(e) which requires the drawbridge open on signal if at least 24 hours notice is given. The I64 Bridge has a vertical clearance in the closed position of 65 feet above mean high water.

Under this temporary deviation, the drawbridge will be closed to navigation from 7 a.m., on Friday, November 15, 2013 to 12 p.m., on Sunday, November 17, 2013.

Vessels able to pass under the drawbridge in the closed position may do so at anytime and are advised to proceed with caution. The drawbridge will not be able to open for emergencies. The Coast Guard will also inform additional waterway users through our Local and Broadcast Notices to Mariners of the closure periods for the drawbridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 21, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–26534 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0880]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Path (Railroad) Bridge across the Hackensack River, mile 3.0, at Jersey City, New Jersey. Under this temporary deviation, the bridge may remain in the closed position for 26 consecutive weekends to facilitate bridge repairs.

DATES: This deviation is effective on weekends from 12:01 a.m. Saturday November 23, 2013 through 12:01 Monday May 19, 2014.

ADDRESSES: The docket for this deviation, [USCG–2013–0880] is available at *http://www.regulations.gov.*

Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil,* or (212) 668–7165. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Path railroad bridge has a vertical clearance of 40 feet at mean high water, and 45 feet at mean low water in the closed position. The existing drawbridge operating regulations are found at 33 CFR 117.5.

The bridge owner, Port Authority Trans-Hudson Corporation (PATH), requested a bridge closure for 26 consecutive weekends to facilitate replacement of rails and ties at the lift span.

Under this temporary deviation, the Path Railroad Bridge may remain in the closed position for 26 consecutive weekends from 12:01 a.m. Saturdays to 12:01 a.m. Mondays effective November 23, 2013 through May 19, 2014.

Vessels that can pass under the closed draw may do so at all times.

The Hackensack River in the vicinity of the Path Railroad Bridge is transited primarily by commercial vessels. Most vessels that habitually transit under the bridge do not require bridge openings.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated repair period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 11, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–26523 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0855]

RIN 1625–AA00

Safety Zone; HITS Triathlon Series; Colorado River; Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of the Colorado River in support of the HITS Triathlon Series. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 7 a.m. on November 9, to 1 p.m. on November 10, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0855]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7656, email *d11marineeventssd@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable. Logistical details did not present the Coast Guard enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Immediate action is needed to ensure the safety of the swimmers from the dangers associated with transiting vessels.

Under 5 U.S.C. 553(d)(3), for the same reasons mentioned above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would be contrary to the public interest, because immediate action is necessary to protect the swimmers from the dangers associated with transiting vessels.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones. The HITS Inc. is sponsoring the HITS Triathlon Series, which will involve 1,200 swimmers transiting North Thompson Bay in Lake Havasu, AZ.

The safety zone will encompass the waters in the northern portion of Thompson Bay, within the following coordinates:

034°27′55.7″ N, 114°20′51.3″ W
034°27′53.6″ N, 114°20′48.0″ W
034°27′19.7″ N, 114°20′53.2″ W
034°27′36.8″ N, 114°20′26.2″ W

This temporary safety zone is necessary to prevent vessels from transiting the area and to protect the swimmers from potential damage and injury.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 7 a.m. to 10 a.m. on November 9, 2013 and 7 a.m. to 1 p.m. on November 10, 2013. The limits of the safety zone will include the waters of the northern portion of Thompson Bay. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of Lake Havasu from 7 a.m. to 10 a.m. on November 9, 2013 and 7 a.m. to 1 p.m. on November 10, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only ten hours early in the day when vessel traffic is low. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone, upon the navigable waters of Lake Havasu. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–602 to read as follows:

§ 165.T11–602 Safety Zone; HITS Triathlon Series; Colorado River, Lake Havasu City, AZ.

(a) *Location.* The safety zone includes the waters in the northern portion of Thompson Bay, within the following coordinates: 034°27′55.7″ N, 114°20′51.3″ W; 034°27′53.6″ N, 114°20′48.0″ W; 034°27′19.7″ N, 114°20′53.2″ W; 034°27′36.8″ N, 114°20′26.2″ W.

(b) *Enforcement Period.* This section will be enforced from 7 a.m. to 10 a.m. on November 9, 2013 and 7 a.m. to 1 p.m. on November 10, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: October 19, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–26521 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0887]

RIN 1625–AA00

Safety Zone, Sea World Fireworks; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in San Diego, California for Sea World Fireworks on the evenings of November 15 and 16, 2013. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:30 p.m. to 9 p.m. on November 15 and 16, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0887]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the fireworks event were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

Register because it is impractical and contrary to the public interest. The Coast Guard did not have the necessary event information in time to provide both a comment period and allow for a 30 day delayed effective date. Immediate action is required to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay, south of Fiesta Island, for a firework event that is part of Sea World Christmas festivities. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone that will be enforced from 8:30 p.m. to 9 p.m. on November 15 and 16, 2013. The safety zone includes the waters of Mission Bay within 600 feet of the fireworks barge, located in approximate position 32°46′03″ N, 117°13′11″ W.

This safety zone is necessary to ensure personnel and vessels not associated with the marine event remain safe by keeping away from the fireworks barge located on the navigable waters of Mission Bay, south of Fiesta Island. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zone. Immediately before and during the fireworks, Coast Guard Sector San Diego Joint Harbor Operations Center will issue Broadcast Notice to Mariners on the location and enforcement of the safety zone.

Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the Captain of the Port of the designated representative. Before activating the safety zone, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zone. The safety zone is relatively small in size, 1,200 foot diameter, short in duration, and traffic would be allowed to pass through the zone with the permission of the Captain of the Port or his designated representative. Additionally, before the effective period, the Coast guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing in the impacted portion of Mission Bay on the evenings of November 15 and 16, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for thirty minutes in the evening when vessel traffic is low. Vessel traffic can safely transit around the safety zone area through alternate routes while the zone is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–0887 to read as follows:

§ 165.T11–0887 Safety Zone; Sea World Fireworks; Mission Bay, San Diego, CA.

(a) *Location.* The safety zone includes the waters of Mission Bay within 600 feet of the fireworks barge, located in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This safety zone will be enforced from 8:30 p.m. to 9 p.m. on November 15 and 16, 2013.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: October 21, 2013.

J.A. Janszen,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2013–26394 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.129B]

Final Priority; Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Rehabilitation Training: Rehabilitation Long-Term Training program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years. We take this action to focus on training in an area of national need. This priority is designed to ensure that consumers of State Vocational Rehabilitation (VR) services have access to qualified rehabilitation counselors who are prepared to adequately address their employment needs and goals. Therefore, the Department intends to fund comprehensive VR counseling programs that meet rigorous standards and provide scholars with a breadth of knowledge and training to meet the current challenges facing consumers and State VR agencies and related agencies.

DATES: *Effective Date:* This priority is effective December 5, 2013.

FOR FURTHER INFORMATION CONTACT: RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW., Room 5055, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7258 or by email: *roseann.ashby@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Rehabilitation Long-Term Training

program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to the award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Program Authority: 29 U.S.C. 772(b).

Applicable Program Regulations: 34 CFR parts 385 and 386.

We published a notice of proposed priority for this competition in the **Federal Register** on June 14, 2013 (78 FR 35808). That notice contained background information and our reasons for proposing this particular priority. There are significant differences between the proposed priority and the final priority, and we fully explain these differences in the *Analysis of Comments and Changes* section of this notice.

Public Comment: In response to our invitation in the notice of proposed priority, 31 parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: A number of commenters proposed that, rather than funding solely master's degree programs in VR counseling, the Department instead fund programs in specialty areas.

For example, almost half of the commenters requested that the Department develop a priority to fund programs leading to a master's degree or a certificate in vocational evaluation. They explained that an individual able to conduct a thorough vocational assessment that truly captures the strengths, abilities, and capabilities of an individual with a disability is critical to the rehabilitation process. They also stated that a competent vocational evaluator is familiar with what is required to obtain employment in today's economy and that such information is invaluable in assisting individuals with disabilities to achieve quality employment outcomes. The commenters also noted that relying on the knowledge and expertise of rehabilitation personnel, such as vocational evaluators, rehabilitation technologists, and customized employment specialists, helps to ease growing workloads and large caseload burdens for VR counselors. Similarly, one commenter expressed concern that the proposed priority focused only on a master's degree in VR counseling and failed to acknowledge the specialty of job placement and job development. This commenter asserted that individuals skilled in this specialty area would gain knowledge critical in assisting individuals to achieve employment in today's economy.

In addition, one commenter expressed concern about the priority's focus on programs that lead to a master's degree in VR counseling because there are few programs that focus on the deaf and hard-of-hearing population. This commenter discussed the value that a certificate program has for rehabilitation professionals focusing on this population.

Discussion: The Department decided to focus this priority solely on master's degree programs in VR counseling, because individuals with this background will gain a breadth of knowledge and experience that will adequately prepare them to meet the employment needs and goals of VR consumers. This focus will also allow scholars to compete for jobs in a variety of employment settings that fulfill the payback obligation and will help to address personnel shortages in the field of vocational rehabilitation. The curriculum leading to this degree covers counseling skills, the medical and psychological aspects of disabilities, and the rehabilitation process from assessment through job placement. These programs also have practicum and internship components. The master's degree in VR counseling is the degree that many State VR agencies require for ''qualified rehabilitation counselors.'' We recognize that VR professionals with degrees and certificates in other specialty areas (e.g., vocational evaluation, job placement and job development, rehabilitation of the deaf) are an important component in strengthening State VR agencies and the quality of services they provide to their clients. However, we also recognize that grants in one or more of these fields may attract fewer program participants, and the employment opportunities of program graduates in these fields would be more limited than those completing a broader VR counseling program. For these reasons and because there is a significant shortage in qualified VR counselors, for purposes of this grant priority, we believe it is justifiable to maintain a strong focus on programs that lead to a master's degree in VR counseling.

Changes: None.

Comment: Several commenters suggested that the final priority be expanded to include doctoral programs. One of these commenters indicated that, in order to address the personnel shortage of VR counselors, professors and instructional staff will need the knowledge and skills to train students seeking master's degrees in accordance with the specifications listed in the proposed priority. The commenter asserted that, if one master's degree student receives training grant support, one VR counselor will be produced, whereas if one doctoral student is supported who goes on to a university training program position, he or she will contribute substantially to training many VR counselors, thus making a significant contribution to addressing the shortage of qualified VR counselors.

Discussion: The Department agrees that a key element in addressing the shortage of VR counselors is ensuring that professors and instructional staff have the necessary knowledge and skills to effectively train counselors. However, the increased costs associated with supporting students in doctoral training programs, as opposed to their counterparts in master's programs, would severely limit the Department's ability to address shortages of qualified State VR personnel in the short term. Given that many State VR agencies are currently unable to comply with their Comprehensive System of Personnel Development (CSPD) requirements, it would not now be appropriate to further restrict the numbers of newly qualified VR counselors entering the field. Some State VR agencies are forced to hire individuals with bachelor's degrees to fill vacant positions and ultimately incur greater costs as these individuals require additional training to meet the CSPD requirements. Therefore, the Department believes that, at this time, supporting doctoral candidates under this priority would only further limit the numbers of newly qualified VR counselors entering the field and increase costs for State VR agencies.

Changes: None.

Comment: A number of commenters suggested that paragraph (b)(1) of the final priority should include an emphasis on essential competencies for today's rehabilitation counselors. Specifically, some of these commenters indicated the importance of competencies such as advanced counseling skills and skills in critical thinking and collaborative relationships.

Discussion: The Department believes that the curriculum should be aligned with competency-based skills in order to prepare counselors to meet the employment needs and goals of VR consumers. The Department agrees that the skills listed by the commenters are important skills for a VR counselor and that the curriculum should help scholars develop those skills. However, advanced counseling skills and skills in critical thinking and collaborative relationships are simply examples of competency-based skills. Applicants are free to propose these and other competency-based skills in the curriculum in order to advance the skill set of prospective counselors.

Changes: We have revised paragraph (b)(1) of the priority to include the skills the commenters suggested as examples of competency-based skills that may be developed through the curriculum.

Comment: A few commenters asked that the Department expand paragraph (b)(2) of the proposed priority to include preparing scholars for the Commission on Rehabilitation Counselor certification (CRCC) exam.

Discussion: The Department understands that scholars completing a master's degree in VR counseling may wish to sit for the CRCC exam, as this is a requirement for employment in some State VR agencies and elsewhere. Paragraph (b)(2) of the priority simply reinforces the responsibility of the VR counseling programs to meet all applicable certification standards. Nothing in this priority precludes applicants from adding or enhancing their curriculum to incorporate preparation for the CRCC exam.

Changes: None.

Comment: Nearly one-third of the commenters focused on paragraph (b)(4) of the proposed priority and teaching scholars to address the needs of individuals with a range of disabilities and individuals with disabilities who are from diverse cultural backgrounds. These commenters suggested encouraging a greater emphasis on preparing scholars to manage the unique challenges and aspects of working with specific populations, such as individuals with severe and persistent psychiatric disabilities, individuals with autism spectrum disorders, individuals who are deaf, individuals who are deaf-blind, veterans with disabilities, transition-aged youth, and individuals who have been involved in the criminal justice system.

Discussion: The Department believes that it is important for the curriculum of a VR counseling program to address the unique challenges of working with individuals with a range of disabilities and individuals from diverse cultural backgrounds. Nothing in this priority precludes applicants from providing training on addressing the needs of the specific populations listed above. However, we are concerned that, by listing certain populations, the priority might give the impression that the applicant should focus only on these populations and not address the needs of others. Therefore, we believe the applicant should develop a curriculum that helps scholars understand the unique needs of individuals representing a wide range of disabilities and cultural backgrounds.

Changes: None.

Comment: Several commenters focused on paragraph (b)(5) of the proposed priority regarding assistive technology. A few of these commenters suggested that the curriculum must train scholars to assess the need for assistive technology throughout the VR process and in order to obtain and maintain competitive employment. One commenter indicated that the priority should recognize that assistive technology is a specialized, ever-changing field, and, as technology continues to expand, scholars will need training by assistive technology specialists.

Discussion: The Department agrees that it is important for the curriculum to teach scholars to assess the needs of individuals with disabilities for assistive technology throughout the VR process, with particular emphasis on assessing their needs for assistive technology in helping them obtain and maintain competitive employment. The Department also acknowledges that assistive technology is ever-changing and consequently that ongoing training will be needed.

Changes: We have revised paragraph (b)(5) of the priority to clarify that applicants must demonstrate how the proposed curriculum will expose scholars to the field of assistive technology and include training so that scholars can recognize the needs of individuals with disabilities for assistive technology throughout the rehabilitation process.

Comment: One commenter proposed specific curriculum requirements for paragraph (b) of the priority. This commenter recommended adding requirements relating to: (1) The Commission on Rehabilitation Counselor Certification Code of Professional Ethics; (2) VR services to transition-age youth; (3) development of an individualized plan for employment, especially identification of a vocational goal and specific measurable objectives; (4) legislative provisions of the Workforce Investment Act, the Rehabilitation Act, as amended, and the Social Security Act and their accompanying regulations; (5) basic financial planning, including managing a budget; (6) consumer choice; (7) negotiation skills; (8) use of social and electronic media, especially as it relates to confidentiality and appropriateness of the use of the media; (9) exposure to the business perspective; (10) critical thinking and decision-making skills; and (11) data analysis.

Discussion: The Department agrees that the curriculum requirements suggested by the commenter would support paragraph (b) of the priority. However, this is not an exhaustive list of elements that could be included in the curriculum. We want to be clear that they are simply examples of elements of the curriculum that applicants must describe in their applications. The applicants are free to propose additional curriculum requirements to ensure that scholars are prepared to effectively meet the needs and demands of consumers with disabilities and employers.

Changes: None.

Comment: Almost half of the commenters expressed concern about the requirement in paragraph (c)(5) of the proposed priority that applicants must ensure that scholars complete an internship in a State VR agency as a requirement for program completion. A number of these commenters were concerned that State VR agencies would not be able to make a sufficient number of internships available for scholars funded through this program. Several of the commenters stated that restricting internships to State VR agencies, as opposed to related, community-based agencies, unnecessarily limits the experiences scholars can gain. A few of these commenters were also concerned that individuals in the program who are employed full-time would find it difficult to fulfill the requirement to participate in an internship.

Discussion: The Department believes that a required internship at a State VR agency or a related agency serves as a valuable learning experience for scholars so that they can apply classroom knowledge in a work-related setting, identify their strengths and weaknesses as prospective rehabilitation counselors, and learn skills that cannot be taught in the classroom, such as interpersonal or communication skills. Further, as the need for qualified VR counselors in the State-Federal VR program is critical, we encourage internships in such settings, to the extent practicable; we recognize that in some circumstances such internships may be unavailable. With regard to the

concern that individuals who are employed full-time while they are scholars in a Rehabilitation Long-Term Training program may have difficulty completing a full-time internship, our intention is that applicants for funding will work creatively to make such internships available to scholars, perhaps on a part-time basis. Such scholars may require more time to complete the program or may need other accommodations to complete their internship requirement.

Changes: We have maintained the requirement that all scholars must complete an internship in a State VR agency but revised paragraph (c)(5) to permit an applicant to provide written justification that it is not feasible for all scholars to complete an internship in a State VR agency. If the justification is sufficient, a project funded under this priority may require all scholars to complete an internship in either a State VR agency or in a related agency, as defined in 34 CFR 386.4. Sufficient justification for proposing that scholars complete internships in settings other than a State VR agency could include concerns about the capacity at the State VR agency to provide adequate supervision of scholars or the physical distance between scholars and the nearest office of the State VR agency (e.g., for scholars enrolled in distance-learning programs or at rural institutions).

Comment: One commenter suggested that in paragraph (d)(1) of the priority we require a course or curriculum segment on how to develop and maintain relationships with potential employers, make initial contacts, assess the needs of employers, and present job-ready clients to employers.

Discussion: The Department agrees with this comment, although the additional suggestions do not comprise an exhaustive list of the employer-related course content that could be offered. This comment is more applicable to paragraph (b)(6) of the priority, which focuses on the course curriculum.

Changes: We have revised paragraph (b)(6) of the priority to provide as examples the specific employer-related curriculum content the commenter suggested.

Comment: One commenter proposed that paragraph (d)(3) of the priority be expanded to require the grantee to provide the worksite supervisor with an assessment tool and offer technical assistance to the supervisor in order to complete the assessment.

Discussion: The Department agrees that an assessment tool is necessary to evaluate the value of a worksite experience at building the knowledge and skills necessary to becoming an effective vocational rehabilitation counselor. We also recognize the value of an assessment tool that both reduces burden on the worksite supervisors and grantees and allows a consistent approach to the evaluation of scholars in a particular program. We strongly encourage grantees and worksite supervisors to work together to ensure the assessment tool accurately reflects the work duties of the scholar during their internship. This may involve the joint development of an assessment tool, or a portion thereof as they see fit. In addition, we agree that it would be appropriate for grantees to offer technical assistance to supervisors as they complete the assessments.

Changes: We have revised paragraph (d)(3) of the priority to require that an assessment tool accurately reflects the specific job duties of a scholar in their internship experience, potentially involving the joint development of that tool between the grantee and the worksite supervisor. In addition, paragraph (d) (3) of the priority will require that the results of the assessment be provided to the grantee and to the scholar.

Comment: One commenter suggested including a plan to routinely gather feedback from consumers and employers to be used to improve VR counseling programs. This commenter also suggested incorporating existing data that the Department, the Social Security Administration, the Veterans Administration, and other agencies and organizations collect from the State VR agencies and using it to improve the curriculum and training programs that support the development of VR professionals.

Discussion: The Department agrees that data from these sources could be beneficial in evaluating the relative success of a training program. We believe that VR counseling programs should consult with as many sources of information as possible when evaluating the impact that they are having on the supply of qualified VR personnel. However, we are also mindful of the potential burden a requirement to collect these data on a regular basis may place on grantees with limited funding.

Changes: We have redrafted the requirement to allow for a broader array of data sources to be included in the evaluation of the program in paragraph (f).

Final Priority:

Vocational Rehabilitation Counseling.

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority to fund programs leading to a master's degree in vocational rehabilitation (VR) counseling. The goal of this priority is to increase the skills of VR counseling scholars so that upon successful completion they are prepared to effectively meet the needs and demands of consumers with disabilities and employers.

Under this priority, applicants must:

(a) Provide data on the current and projected employment needs and personnel shortages in State VR agencies and other related agencies as defined in 34 CFR 386.4 in their local area, region, and State, and describe how the proposed program will address those employment needs and personnel shortages.

(b) Describe how the VR counseling program will provide rehabilitation counselors the skills and knowledge that will help ensure that the individuals with disabilities that they serve can meet current demands and emerging trends in the labor market, including how:

(1) The curriculum provides a breadth of knowledge, experience, and rigor that will adequately prepare scholars to meet the employment needs and goals of VR consumers and aligns with evidence-based practices and with competency-based skills (e.g., advanced counseling skills, critical thinking skills, and skills in building collaborative relationships) in the field of VR counseling;

(2) The curriculum prepares scholars to meet all applicable certification standards;

(3) The curriculum addresses new or emerging consumer employment needs or trends at the national, State, and regional levels;

(4) The curriculum teaches scholars to address the needs of individuals with a range of disabilities and individuals with disabilities who are from diverse cultural backgrounds;

(5) The curriculum will train scholars to recognize the assistive technology needs of consumers throughout the rehabilitation process so that they will be better able to coordinate the provision of appropriate assistive technology services and devices in order to assist the consumer to obtain and retain employment;

(6) The curriculum will teach scholars to work effectively with employers in today's economy, including by teaching strategies for developing relationships with employers in their State and local areas, identifying employer needs and skill demands, making initial employer contacts, presenting job-ready clients to potential employers, and conducting follow-up with employers; and

(7) The latest technology is incorporated into the methods of instruction (e.g., the use of distance education to reach scholars who live far from the university and the use of technology to acquire labor market information).

(c) Describe their methods to:

(1) Recruit highly capable prospective scholars who have the potential to successfully complete the academic program, all required practicum and internship experiences, and the required service obligation;

(2) Educate potential scholars about the terms and conditions of the service obligation under 34 CFR 386.4, 386.34, and 386.40 through 386.43 so that they will be fully informed before accepting a scholarship;

(3) Maintain a system that ensures that scholars sign a payback agreement and an exit form when they exit the program, regardless of whether they drop out, are removed, or successfully complete the program;

(4) Provide academic support and counseling to scholars throughout the course of the academic program to ensure successful completion;

(5) Ensure that all scholars complete an internship in a State VR agency as a requirement for program completion. In such cases where an applicant can provide sufficient justification that it is not feasible for all students receiving scholarships to meet this requirement, the applicant may require scholars to complete an internship in a State VR agency or a related agency, as defined in 34 CFR 386.4. Circumstances that would constitute sufficient justification may include, but are not limited to, a lack of capacity at the State VR agency to provide adequate supervision of scholars during their internship experience or the physical distance between scholars and the nearest office of the State VR agency (e.g., for scholars enrolled in distance-learning programs or at rural institutions). Applicants should include written justification in the application or provide it to Rehabilitation Services Administration (RSA) for review and approval by the appropriate RSA Project Officer no later than 30 days prior to a scholar beginning an internship in a related agency;

(6) Provide career counseling, including informing scholars of professional contacts and networks, job leads, and other necessary resources and information to support scholars in successfully obtaining and retaining qualifying employment;

(7) Maintain regular contact with scholars upon successful program completion (e.g., matching scholars with mentors in the field), to ensure that they have support during their search for qualifying employment as well as support during the initial months of their employment;

(8) Maintain regular communication with scholars after program exit to ensure that scholar contact information is up-to-date and that documentation of employment is accurate and meets the regulatory requirements for qualifying employment; and

(9) Maintain accurate information on, while safeguarding the privacy of, current and former scholars from the time they are enrolled in the program until they successfully meet their service obligation.

(d) Describe a plan for developing and maintaining partnerships with State VR Agencies and community-based rehabilitation service providers that includes:

(1) Coordination between the grantee and the State VR agencies and community-based rehabilitation service providers that will promote qualifying employment opportunities for scholars and formalized on-boarding and induction experiences for new hires;

(2) Formal opportunities for scholars to obtain work experiences through internships, practicum agreements, job shadowing, and mentoring opportunities; and

(3) A scholar internship assessment tool that is developed to ensure a consistent approach to the evaluation of scholars in a particular program. The tool should reflect the specific responsibilities of the scholar during the internship. The grantee and worksite supervisor are encouraged to work together as they see fit to develop the assessment tool. Supervisors at the internship site will complete the assessment detailing the scholar's strengths and areas for improvement that must be addressed and provide the results of the assessment to the grantee. The grantee should ensure that (A) scholars are provided with a copy of the assessment and all relevant rubrics prior to beginning their internship, (B) supervisors have sufficient technical support to accurately complete the assessment, and (C) scholars receive a copy of the results of the assessment within 90 days of the end of their internship.

(e) Describe how scholars will be evaluated throughout the entire program to ensure that they are proficient in meeting the needs and demands of today's consumers and employers, including the steps that will be taken to provide assistance to a scholar who is not meeting academic standards or who is performing poorly in a practicum or internship setting.

(f) Describe how the program will be evaluated. Such a description must include:

(1) How the program will determine its effect over a period of time on filling vacancies in the State VR agency with qualified counselors capable of providing quality services to consumers;

(2) How input from State VR agencies and community-based rehabilitation service providers will be included in the evaluation;

(3) How feedback from consumers of VR services and employers (including the assessments described in paragraph (d)(3)) will be included in the evaluation;

(4) How data from other sources, such as those from the Department, on the State VR program will be included in the evaluation; and

(5) How the data and results from the evaluation will be used to make necessary adjustments and improvements to the program.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The benefits of the Rehabilitation Long-Term Training program have been well established over the years through the successful completion of similar projects. Grants to provide funding for scholars to acquire master's degrees in VR counseling are needed to ensure that State VR agencies and related agencies have a supply of qualified VR counselors with the skills to assist individuals with disabilities to achieve employment in today's economy.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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Dated: October 30, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–26500 Filed 11–4–13; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Docket No. 2012–1 CRB Business Establishments II]

Determination of Rates and Terms for Business Establishment Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges are publishing final regulations setting the rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2014, through December 31, 2018.

DATES: *Effective date:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707–8658. Email: *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance in Sound Recordings Act, Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

Congress expanded the scope of the section 114 statutory license in the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105–34. The DMCA authorizes the public performance of a sound recording when the sound recording is made by a preexisting satellite digital audio radio service or as part of an eligible nonsubscription transmission in accordance with the terms and rates of the statutory license. *See* 17 U.S.C. 114(d). The DMCA also created a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording to facilitate transmission of a public performance of a sound recording. *Id.* The license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than one phonorecord permitted under the exemption set forth in section 112(a). *Id.*

The Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for ''the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).'' 17 U.S.C. 801(b)(1), 804(b)(2).[1] Thus, the Judges, in accordance with 17 U.S.C. 804(b)(2), published a notice in the **Federal Register** commencing the current proceeding to set rates and terms for the section 112(e) license and requesting interested parties to submit their petitions to participate. 77 FR 133 (Jan. 3, 2012). In response to the notice, the Judges received petitions to participate from: Pandora Media, Inc.; Music Choice; DMX, Inc.; Muzak, LLC; Music Reports, Inc.; Clear Channel Broadcasting, Inc.; SoundExchange, Inc.; and Sirius XM Radio, Inc. The Judges set the timetable for the three-month negotiation period, *see* 17 U.S.C. 803(b)(3), as well as a deadline of November 16, 2012, for the participants' submission of written direct statements. Subsequently, the Judges granted the participants' request to extend the deadline to November 29, 2012, in order to allow the participants to finalize a settlement agreement. *See Order Granting Joint Motion for Extension of Time for Filing Written Direct Statements,* Docket No. 2012–1 CRB Business Establishments II (Nov. 14, 2012). On November 29, 2012, the Judges received a Motion to Adopt Settlement stating that all participants had reached a settlement obviating the need for a hearing.

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. This section provides in part that the Judges must provide to both non-participants and participants to the rate proceeding who ''would be bound by the terms, rates, or other determination set by any agreement * * * an opportunity to comment on the agreement.'' 17 U.S.C. 801(b)(7)(A)(i). Participants to the proceeding may also ''object to [the agreement's] adoption as a basis for statutory terms and rates.'' *Id.*

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [to the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii). Accordingly, on July 19, 2013, the Judges published a notice requesting comment on the proposed rates and terms. 78 FR 43094. The Judges received no comments or objections in response to the July 19 notice.

Having received no comments or objections to the proposal, the Judges, by this notice, are adopting as final regulations the rates and terms for the making of an ephemeral recording by a business establishment service for the period January 1, 2014, through December 31, 2018.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges amend Part 384 of Chapter III of title 37 of the Code of Federal Regulations as follows:

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

■ 1. The authority citation for part 384 continues to read as follows:

Authority: 17 U.S.C. 112(e), 801(b)(1).

§ 384.1 [Amended]

■ 2. Section 384.1 is amended as follows:

■ a. In paragraph (a), by removing ''§ 384.2(a)'' and adding ''§ 384.2'' in its place, and by removing ''2009–2013'' and adding ''January 1, 2014, through December 31, 2018'' in its place;

■ b. In paragraph (b), by removing ''licenses set forth in 17 U.S.C. 112'' and adding ''license set forth in 17 U.S.C. 112(e)'' in its place; and

■ c. In paragraph (c), by removing ''services'' and adding ''Licensees'' in its place.

■ 3. Section 384.2 is amended by revising the definition for ''*Copyright Owner*'' to read as follows:

§ 384.2 Definitions.

* * * * *

Copyright Owners are sound recording copyright owners who are entitled to royalty payments made under this part pursuant to the statutory license under 17 U.S.C. 112(e).

* * * * *

§ 384.3 [Amended]

■ 4. Section 384.3 is amended as follows:

■ a. In paragraph (a), by removing ''service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv)'' and adding ''Business Establishment Service'' in its place and removing ''10%'' and adding ''12.5%'' in its place; and

■ b. In paragraph (b), by removing ''$10,000 for each calendar year'' and adding ''$10,000 for each calendar year of the License Period'' in its place.

■ 5. Section 384.4 is amended as follows:

[1] The Judges commenced a proceeding in 2007, as directed by section 804(b)(2) of the Copyright Act, and published final regulations in the **Federal Register** on March 27, 2008. 73 FR 16199. Therefore, commencement of the next proceeding—the current proceeding—was to occur in January 2012. 17 U.S.C. 804(b)(2).

■ a. By revising the paragraph heading for paragraph (a);
■ b. In paragraph (b)(2)(i), by removing ''condition precedent in paragraph (b)(2) of this section'' and adding ''condition precedent in this paragraph (b)(2)'' in its place, and by removing ''authorized such Collective'' and adding ''authorized the Collective'' in its place;
■ c. By revising paragraphs (c) through (e);
■ d. By revising introductory text of paragraph (f);
■ e. In paragraph (f)(2), by removing ''facsimile number'' and adding ''facsimile number (if any)'' in its place, and by removing ''individual or individuals'' and adding ''person'' in its place;
■ f. In paragraph (f)(3), by removing ''handwritten'';
■ g. In paragraph (f)(3)(i), by removing ''a corporation'' and adding ''corporation'' in its place;
■ h. In paragraph (f)(6), by removing ''a corporation'' and adding ''corporation'' in its place;
■ i. In paragraph (f)(8), by removing ''if the Licensee is a corporation or partnership,'';
■ j. By revising paragraphs (g) and (h); and
■ k. By removing paragraph (i).

The revisions read as follows:

§ 384.4 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* * * * * * * * * *

(c) *Monthly payments.* A Licensee shall make any payments due under § 384.3(a) on a monthly basis on or before the 45th day after the end of each month for that month. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any minimum payment due under § 384.3(b) by January 31 of the applicable calendar year, except that payment by a Licensee that has not previously made Ephemeral Recordings pursuant to the license under 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 1.0% per month, or the highest lawful rate, whichever is lower, if either or both a required payment or statement of account for a required payment is received by the Collective after the due date. Late fees shall accrue from the due date until both the payment and statement of account are received by the Collective.

(f) *Statements of account.* For any part of the License Period during which a Licensee operates a Business Establishment Service, at the time when a minimum payment is due under paragraph (d) of this section, and by 45 days after the end of each month during the period, the Licensee shall deliver to the Collective a statement of account containing the information set forth set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Collective. In the case of a minimum payment, or if a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall contain only the following information:
* * * * * *

(g) *Distribution of royalties.* (1) The Collective shall promptly distribute royalties received from Licensees directly to Copyright Owners, or their designated agents, that are entitled to such royalties. The Collective shall only be responsible for making distributions to those Copyright Owners or their designated agents who provide the Collective with such information as is necessary to identify the correct recipient. The Collective shall distribute royalties on a basis that values all Ephemeral Recordings by a Licensee equally based upon the information provided under the reports of use requirements for Licensees contained in § 370.4 of this chapter.

(2) If the Collective is unable to locate a Copyright Owner entitled to a distribution of royalties under paragraph (g)(1) of this section within 3 years from the date of payment by a Licensee, such royalties shall be handled in accordance with § 384.8.

(h) *Retention of records.* Books and records of a Licensee and of the Collective relating to payments of and distributions of royalties shall be kept for a period of not less than the prior 3 calendar years.

§ 384.5 [Amended]

■ 6. Section 384.5 is amended as follows:
■ a. In paragraph (a), by removing ''part'' and adding ''section'' in its place, and by removing ''account, any information'' and adding ''account and any information'' in its place;
■ b. In paragraph (b), by removing ''The Collective shall have'' and adding ''The party claiming the benefit of this provision shall have'' in its place;
■ c. In paragraph (c), by removing ''activities directly related thereto'' and adding ''activities related directly thereto'' in its place;
■ d. In paragraph (d)(1), by removing ''work, require access to the records'' and adding ''work require access to Confidential Information'' in its place;
■ e. In paragraph (d)(2), by removing ''Collective committees'' and adding ''the Collective committees'' in its place, and by removing ''confidential information'' and adding ''Confidential Information'' in its place each place it appears;
■ f. In paragraph (d)(3), by removing ''respect to the verification of a Licensee's royalty payments'' and adding ''respect to verification of a Licensee's statement of account'' in its place;
■ g. In paragraph (d)(4), by removing ''Copyright owners whose works'' and adding ''Copyright Owners, including their designated agents, whose works'' in its place, by removing '', or agents thereof'', and by removing ''confidential information'' and adding ''Confidential Information'' in its place; and
■ h. In paragraph (e), by removing ''to safeguard all Confidential Information'' and adding ''to safeguard against unauthorized access to or dissemination of any Confidential Information'' in its place, and by removing ''belonging to such Collective'' and adding ''belonging to the Collective'' in its place.

■ 7. Section 384.6 is amended by revising paragraph (d) to read as follows:

§ 384.6 Verification of royalty payments.

* * * * * *

(d) *Acquisition and retention of report.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Collective shall retain the report of the verification for a period of not less than 3 years.
* * * * * *

■ 8. Section 384.7 is amended as follows:
■ a. In paragraph (a), by removing ''Provided'' and adding ''provided'' in its place; and
■ b. By revising paragraph (d).

The revision reads as follows:

§ 384.7 Verification of royalty distributions.

* * * * * *

(d) *Acquisition and retention of record.* The Collective shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit. The Copyright Owner requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.
* * * * * *

■ 9. Section 384.8 is revised to read as follows:

§ 384.8 Unclaimed funds.

If the Collective is unable to identify or locate a Copyright Owner who is entitled to receive a royalty distribution under this part, the Collective shall retain the required payment in a segregated trust account for a period of 3 years from the date of distribution. No claim to such distribution shall be valid after the expiration of the 3-year period. After expiration of this period, the Collective may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: September 18, 2013.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 2013–26382 Filed 11–4–13; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2013–0399; FRL–9902–16]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Removal of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is removing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for chemical substances identified as alkanes, C21–34—branched and linear, chloro; alkanes, C22–30—branched and linear, chloro; and alkanes, C24–28, chloro, which were the subject of premanufacture notices (PMNs) P–12–539, P–13–107, and P–13–109, respectively. EPA published these SNURs using direct final rulemaking procedures. EPA received a notice of intent to submit adverse comments on the rules. Therefore, the Agency is removing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these three chemical substances under separate notice and comment procedures.

DATES: This final rule is effective November 5, 2013.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0399, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of August 7, 2013 (78 FR 48051) (FRL–9393–4). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. What rules are being removed?

In the **Federal Register** of August 7, 2013 (78 FR 48051), EPA issued several direct final SNURs, including SNURs for the chemical substances that are the subject of this removal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721, subpart D. In accordance with § 721.160(c)(3)(ii), EPA is removing the rules issued for chemical substances identified as alkanes, C21–34—branched and linear, chloro; alkanes, C22–30—branched and linear, chloro; and alkanes, C24–28, chloro, which were the subject of PMNs P–12–539, P–13–107, and P–13–109, respectively, because the Agency received a notice of intent to submit adverse comments. EPA intends to publish proposed SNURs for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNUR for the chemical substances that are being removed was established at EPA–HQ–OPPT–2013–0399. That record includes information considered by the Agency in developing this rule and the notice of intent to submit adverse comments.

III. Statutory and Executive Order Reviews

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this removal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** of August 7, 2013 (78 FR 48051). Those review requirements do not apply to this action because it is a removal and does not contain any new or amended requirements.

IV. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 28, 2013.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318,

1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. In § 9.1, remove under the undesignated center heading ''Significant New Uses of Chemical Substances'' §§ 721.10673, 721.10674, and 721.10675.

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.10673, 721.10674, and 721.10675 [Removed]

■ 4. Remove §§ 721.10673, 721.10674, and 721.10675.

[FR Doc. 2013–26508 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0779; FRL–9902–33-Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio: Bellefontaine; Determination of Attainment for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 19, 2013, the Ohio Environmental Protection Agency (Ohio EPA), submitted a request to EPA to make a determination under the Clean Air Act (CAA) that the Bellefontaine nonattainment area has attained the 2008 lead (Pb) national ambient air quality standards (NAAQS or standard). In this action, EPA is determining that the Bellefontaine nonattainment area (hereafter also referred to as the ''Bellefontaine area'' or ''area'') has attained the 2008 Pb NAAQS. This determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2010–2012 design period showing that the area has monitored attainment of the 2008 Pb NAAQS. Additionally, as a result of this determination, EPA is suspending the requirements for the area to submit an attainment demonstration, together with reasonably available control measures (RACM), a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines for as long as the area continues to attain the 2008 Pb NAAQS.

DATES: This direct final rule will be effective January 6, 2014, unless EPA receives adverse comments by December 5, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0779, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: aburano.douglas@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0779. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What actions is EPA taking?

EPA is taking final action to determine that the Bellefontaine area (comprised of the portions of Logan County that are bounded by: Sections 27, 28, 33, and 34 of Lake Township) has attained the 2008 Pb NAAQS. This

is based upon complete, quality-assured and certified ambient air monitoring data for the 2010–2012 monitoring period showing that the area has monitored attainment of the 2008 Pb NAAQS.

Further, with the finalization of this determination of attainment, the requirements for the Bellefontaine area to submit an attainment demonstration together with RACM, a RFP plan, and contingency measures for failure to meet RFP and attainment deadlines would be suspended for as long as the area continues to attain the 2008 Pb NAAQS. As discussed below, this action is consistent with EPA's regulations and with its longstanding interpretation of subpart 1 of part D of the CAA.

If the area violates the 2008 Pb NAAQS after this action, the basis for the suspension of these attainment planning requirements would no longer exist for the Bellefontaine area, and the area would thereafter have to address such requirements.

II. What is the background for these actions?

On November 12, 2008 (73 FR 66964), EPA established a 2008 primary and secondary Pb NAAQS at 0.15 micrograms per cubic meter ($\mu g/m^3$) based on a maximum arithmetic 3-month mean concentration for a 3-year period. *See* 40 CFR 50.16. On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 Pb NAAQS based upon air quality monitoring data from those monitors for calendar years 2007–2009. These designations became effective on December 31, 2010.[1] The Bellefontaine area was designated nonattainment for the 2008 Pb NAAQS. *See* 40 CFR 81.343.

On April 19, 2013, the Ohio EPA, submitted a request to EPA to make a determination that the Bellefontaine area has attained the 2008 Pb NAAQS based on complete, quality-assured, quality-controlled monitoring data from 2010 through 2012.

III. Application of EPA's Clean Data Policy to the 2008 Pb NAAQS

Following enactment of the CAA Amendments of 1990, EPA promulgated its interpretation of the requirements for implementing the NAAQS in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (General Preamble) 57 FR 13498, 13564 (April 16, 1992). In 1995, based on the interpretation of CAA sections 171 and 172, and section 182 in the General Preamble, EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, ''RFP, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard'' (May 10, 1995). In 2004, EPA indicated its intention to extend the Clean Data Policy to the (fine particulates) $PM_{2.5}$ NAAQS. *See* Memorandum from Steve Page, Director, EPA Office of Air Quality Planning and Standards, ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' (December 14, 2004).

Since 1995, EPA has applied its interpretation under the Clean Data Policy in many rulemakings, suspending certain attainment-related planning requirements for individual areas, based on a determination of attainment. EPA recently applied this policy to the 2008 Pb NAAQS for the Bristol, Tennessee nonattainment area (77 FR 52232). For a full discussion on EPA's application of this policy, see section III of the Bristol, Tennessee Determination of Attainment for the 2008 Pb Standards (77 FR 35653).

IV. Does the Bellefontaine area meet the 2008 Pb NAAQS?

A. Criteria

Today's rulemaking assesses whether the Bellefontaine area has attained the 2008 Pb NAAQS, based on the most recent three years of quality-assured data. The Bellefontaine area comprises the portion of Logan County bounded by sections 27, 28, 33, and 34 of Lake Township, which surrounds the Daido Facility. The Daido Facility manufactured metal parts for automobiles.

Under EPA regulations at 40 CFR 50.16, the 2008 primary and secondary Pb standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, appendix R, is less than or equal to 0.15 $\mu g/m^3$ at all relevant monitoring sites in the subject area.

EPA has reviewed the ambient air monitoring data for the Bellefontaine area in accordance with the provisions of 40 CFR part 50, appendix R. All data considered are complete, quality-assured, certified, and recorded in EPA's Air Quality System (AQS) database. This review addresses air quality data collected in the 2010–2012 period which are the most recent quality-assured data available.

B. Daido Facility Monitor

40 CFR Part 58, appendix D, Section 4.5, states that ''At a minimum, there must be one source-oriented State and Local Air Monitoring Station site located to measure the maximum Pb concentration in ambient air resulting from each non-airport Pb source which emits 0.50 or more tons per year . . .'' In June of 2009, operation of the Daido Facility permanently shut down. A contractor for the Daido Facility ran a Pb monitor at site 39–091–0006 through 2009. The Ohio EPA took responsibility for the site on January 1, 2010. During the last two months of the site being operated by the industry contractor, November and December of 2009, data were not collected.

This absence of data for November and December of 2009 raised a potential question about whether sufficient data are available to determine that the Bellefontaine area is attaining the Pb standard. For sites that began operation many years ago, EPA would examine air quality for the most recent 36 3-calendar month periods, which for 2010–2012 would include 3-month averages based in part on data for November and December 2009. On the other hand, according to 40 CFR Part 50, appendix R Section 4(a), ''For sites that begin monitoring Pb after [January 12, 2009] but before January 15, 2010 (or January 15, 2011), a 2010–2012 (or 2011–2013) Pb design value that meets the NAAQS will be considered valid if it encompasses at least 34 consecutive valid 3-month means (specifically encompassing only the 3-year calendar period).''

For the Bellefontaine area, EPA believes it is appropriate to consider site 39–091–0006 a new site as of January 1, 2010. The contractor that was responsible for the operation of this site through the end of 2009, failed to operate the monitor after October 2009. On January 1, 2010, the Ohio EPA Southwest District Office began operation of a new monitor at the site. Ohio EPA demonstrated that the changes to the monitoring network were appropriate and the data is valid for attainment determinations. EPA finds it appropriate to consider this a new site as of January 1, 2010, such that attainment may be judged based on 34 consecutive valid 3-month averages. For the information leading EPA to this conclusion, see the October 2013 Technical Support Document available in the docket for this rulemaking.

[1] EPA completed a second and final round of designations for the 2008 Lead NAAQS on November 22, 2011. *See* 76 FR 72097. No additional areas in Ohio were designated as nonattainment for the 2008 Lead NAAQS.

C. Bellefontaine Area Air Quality

The 39–091–0006 site is a Federal reference method (FRM) source-oriented monitor which meets the quality assurance requirements of 40 CFR part 58, appendix A. The three-month rolling averages at this site have not exceeded the standard since 2007. After the permanent shutdown of the Daido Facility in June of 2009, the Pb values have been well below the standard.

Table 1 shows the 2010–2012 three-month rolling averages for the Bellefontaine area.

Location	AQS site ID	3-month period	2010	2011	2012
Richard Ave.—Daido Facility Bellefontaine.	39–091–0006	Nov–Jan	.....	.004	.003
		Dec–Feb	.....	.003	.003
		Jan–Mar	.006	.004	.003
		Feb–Apr	.006	.003	.003
		Mar–May	.006	.003	.003
		Apr–Jun	.004	.003	.003
		May–July	.004	.003	.004
		Jun–Aug	.004	.003	.003
		July–Sept	.004	.003	.003
		Aug–Oct	.004	.005	.003
		Sept–Nov	.004	.005	.003
		Oct–Dec	.004	.004	.003

The data shown in Table 1 are complete, quality-assured, and certified. Data in February and March of 2012 were not 75 percent complete, but were more than 50 percent complete making them eligible for the ''below NAAQS level test'' in 40 CFR Part 50, appendix R (4)(c)(ii)(B). Ohio accurately applied this test and the data were sufficient to be considered complete.

The Daido Facility's NEI emissions in 2005 were 0.121 tons per year (tpy), more than half of the lead emissions in the county. The next three largest contributors in the county have emissions of 0.035 tpy, 0.0075 tpy, and 0.0075 tpy. Production at the Daido Facility started to decrease in 2008 as the automobile industry declined, and the ambient air Pb levels reflect this. Concurrent with the shutdown of the largest source, the ambient air lead values have been cut by more than half.

EPA's review of these data indicates that the Bellefontaine area has attained and continues to attain the 2008 Pb NAAQS, with a design value of 0.006 $\mu g/m^3$ for the period of 2010–2012.

V. What is the effect of these actions?

EPA is determining that the Bellefontaine area has attained the 2008 Pb NAAQS, based on complete, quality-assured and certified data for 2010–2012. Also, the requirements for the Ohio EPA to submit an attainment demonstration and associated RACM, a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2008 Pb NAAQS for the Bellefontaine area are suspended for so long as the area continues to attain the 2008 Pb NAAQS. EPA rulemaking is consistent and in keeping with its long-held interpretation of CAA requirements, as well as with EPA's regulations for similar determinations for ozone (*see* 40 CFR 51.918) and $PM_{2.5}$ (*see* 40 CFR 51.1004(c)).

This action does not constitute a redesignation of the area to attainment of the 2008 Pb NAAQS under section 107(d)(3) of the CAA. This action does not involve approving a maintenance plan for the area as required under section 175A of the CAA, nor does it find that the area has met all other requirements for redesignation. The Bellefontaine area remains designated nonattainment for the 2008 Pb NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective January 6, 2014 without further notice unless we receive relevant adverse written comments by December 5, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective January 6, 2014.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: October 21, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1892 is amended by adding paragraph (e) to read as follows:

§ 52.1892 Determination of attainment.

* * * * *

(e) Based upon EPA's review of the air quality data for the 3-year period 2010 to 2012, EPA determined that the Bellefontaine, OH lead nonattainment areas attained the 2008 Lead National Ambient Air Quality Standard (NAAQS). This clean data determination suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2008 lead NAAQS.

[FR Doc. 2013–26358 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9902–29–Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Geiger (C&M Oil) Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is publishing a direct final Notice of Deletion of the Geiger (C&M Oil), Superfund Site (Site), located in Hollywood, Charleston County, South Carolina, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SCDHEC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective January 6, 2014 unless EPA receives adverse comments by December 5, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011; by one of the following methods:

• *http://www.regulations.gov*. Follow on-line instructions for submitting comments.

• *Email: Joyner.William@EPA.gov* and/or *Miller.Angela@EPA.gov*.

• *Fax:* (404) 562–8788 Attention: William Joyner.

• *Mail:* William Joyner, Remedial Project Manager, Superfund Remedial Section A, Superfund Remedial and Site Evaluation Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303–8960.

• *Hand delivery:* U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional EPA Office is open for business Monday through Friday, 8:30 a.m. to 4:00 p.m., excluding Federal Holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2005–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov,* or in hard copy at: Regional Site Information Repository, U.S. EPA Record Center, Attn: Ms. Anita Davis, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Hours of Operation (by appointment only): 8:30 a.m. to 4:00 p.m., Monday through Friday. Local Document Repository, St. Paul's Parish Library, 5151 Town Council Drive, Hollywood, SC 29449.

FOR FURTHER INFORMATION CONTACT: William Joyner, Remedial Project Manager, Superfund Remedial, Section A; Superfund Remedial and Site Evaluation Branch, Superfund Division; U.S. Environmental Protection Agency, Region 4; 61 Forsyth Street SW.; Atlanta, GA 30303–8960, Telephone, or VM (404) 562–8795, Electronic mail: *Joyner.William@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 4 is publishing this direct final Notice of Deletion of the Geiger (C&M Oil) Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective January 6, 2014 unless EPA receives adverse comments by December 5, 2013. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Geiger (C&M Oil) Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of South Carolina prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the South Carolina Department of Health and Environmental Control, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, Post and Courier. The newspaper notice announces the 30-day public comment

period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background

The Geiger (C&M Oil) Site (EPA CERCLIS Identification Number SCD980711279) is located approximately 10 miles west of the city of Charleston, South Carolina, along Highway 162. The town of Hollywood is located approximately 4 miles west of the site. The Site consist of an affected area that is approximately 1.5 acres in size, triangular in shape and is bound on two sides by ponds, and on the third side by a small rise. The area around the Site is sparsely populated with approximately ten residences located west and southwest of the site. Another 10 residences are located to the east and north east with several small businesses within (0.5) miles of the site along Highway 162. Between 1969 and 1971, eight unlined lagoons, each approximately 1 foot deep for a combined area of 1.5 acres were constructed for the purpose of holding waste oil in connection with an incineration process.

In late 1971, in response to complaints from area residents, South Carolina Pollution Control Agency (SCPCA) ordered the stoppage of all incineration and waste deposition activities at the Site and the owner was directed to take action to prevent the spillage, leakage, or seepage of oil from the Site. In April 1974, a complaint was filed by a nearby property owner with the Charleston County Health Department (CCHD) about oil overflowing from the lagoons on the Site. CCHD investigated the Site and ordered the Site closed because of evidence of oil dumping and overflowing oil. C&M Oil Distributors, Inc. then purchased all reclaimable oil on the Site and submitted recovery plans to SCDHEC, formerly SCPCA, but reportedly received no response to their plans. In December 1979, SCDHEC requested that the company provide information on their intentions to clean up the Site. C&M Oil Distributors, Inc. stated in January 1980 that they were unable to recover the waste oil and were not obligated to clean up the Site. Investigations of Site activities revealed evidence of oil dumping and oil overflowing from lagoons on site. The facility was ordered to stop all incineration and waste disposition activities at the site and action be taken to prevent spillage, leakage, and seepage of oil from the Site.

Remedial Investigation and Feasibility Study (RI/FS)

Samples collected during the remedial investigation provide sufficient data to characterize the Site. Results of laboratory analysis revealed the presence of inorganic contaminants (chromium, mercury and lead) in the soil in concentrations exceeding the common ranges for these metals in soils. The highest concentrations were found in the oil stained area confirming that this area is the contaminant source. The laboratory found no organic contaminants in the soil samples taken from the oil stained area. The laboratory found several organics in the shallow and medium on site monitor well samples. Elevated levels of metals and organics were found in samples taken from the oil stained area and analyzed by the Contract Laboratory Program (CLP) . Some of these same organics were found in the shallow on-site monitor well. The laboratory samples of the surface waters were free of any organic contamination. Evidence of polychlorinated biphenyl-1242 (PCB–1242) and petroleum products was found in several surface water samples by the CLP laboratory. Private wells to the north, east and southwest of the site were found to be free of contamination. Ground water contamination appears to be limited to the oil stained area. Based on the local laboratory results, ground water contamination has not moved from the Site. The results from the CLP sample analysis support these conclusions. Based on air monitoring during the RI, organic air contamination was not found to be a problem. The final feasibility study dated July 1987 provided an in-depth summary and discussion of site sampling activities, and an analysis of remedial alternatives. The feasibility study provided an analysis of extraction (soil) flushing, solidification/stabilization, attenuation, immobilization, incineration, capping, vegetative cover, excavation and offsite disposal, partial excavation with onsite disposal, onsite containment/encapsulation and no action remedial alternatives.

Selected Remedy

A Record of Decision (ROD) was signed in June 1987, and two ROD amendments (AROD) were signed; one in July 1993 and the second in September 1998. The purpose of the remedial action at the Site was to mitigate and minimize contamination in the soils and ground water and to reduce potential risks to human health and the environment. The following cleanup objectives were determined based on regulatory requirements and levels of contamination found at the Site:

- Recovering contaminated ground water with on-site treatment and discharge to an off-site stream;
- protecting public health and the environment from exposure to contaminated on-site soils through inhalation, direct contact, and erosion of soils into surface waters and wetlands;
- preventing off-site movement of contaminated ground water; and
- restoring contaminated ground water to levels protective of human health and the environment.

The 1987 ROD selected a remedial alternative to prevent direct contact exposure and inhalation of contaminants in the soil, potential ingestion of contaminated ground water by on-site workers and potential future residents; further leaching of contaminants to ground water above drinking water standards; and potential direct contact exposure to environmental receptors. The selected remedy included:

- Recovery of contaminated ground water with on-site treatment and discharge to an off-site stream;
- on-site thermal treatment of excavated soils to remove organic contaminants;
- solidification/stabilization (S/S) of thermally-treated soil to reduce mobility of metals;

- review of S/S, during the remedial design, to determine if S/S alone would achieve remedial action goals; and
- development of soil cleanup goals during the remedial design.

The selected remedy established cleanup goals for contaminants in the ground water based on drinking water standards. The selected remedy eliminated the principal threat posed to human health and the environment by preventing further migration of contaminants to the ground water and by remediating ground water to drinking water standards. The 1987 ROD indicated that no elevated levels of contaminants were found in the pond on-site. Soil and ground water were found to be contaminated with the contaminants of concern (COCs) listed in Table 1.

TABLE 1—GROUND WATER AND SOIL CONTAMINANTS OF CONCERN

Ground water and soil contaminants of concern
Benzo (a) pyrene.
Benzo (a) anthracene.
Benzo (b and/or k) fluoranthene.
Polychlorinated biphenyls (PCBs) (Aroclor 1254).
Benzene.
Trans-1,2-dichloroethylene.
Chromium.
Lead.
Toluene.
1,2-Dichlorobenzene.
1,1-Dichloroethane.

Treatability studies conducted during the remedial design determined that S/S alone would remediate contaminated soils. Based on these studies, the ROD was amended on July 13, 1993 to state that only S/S would be conducted, thermal treatment would not be needed. EPA issued another ROD amendment on September 9, 1998, changing the ground water remedy from pump and treat to monitored natural attenuation (MNA) and revising the ground water COCs to only include cadmium and lead, with respective cleanup goals of 5µg/L and 15µg/L. Soil leachate criteria were established in the 1993 AROD to protect the ground water.

Response Actions

In February 1992, EPA entered into a cooperative agreement with the U.S. Army Corps of Engineers (USACE) to perform the remedial design/remedial action (RD/RA). After the final design was completed, USACE awarded the RA contract to McLaren/Hart Environmental Engineering Corporation (McLaren/Hart) for solidification/stabilization of Site soils. McLaren/Hart mobilized to the field for full-scale soil treatment on January 16, 1994. Soil treatment was completed on April 23, 1994 followed by placement of a gravel cap over the treated soil, which was completed on August 5, 1994. The pre-final inspection, conducted on August 9, 1994, did not discover any significant outstanding items and therefore served as the final inspection. Both the site's Final Construction Report and the Interim Remedial Action Report were approved by EPA and SCDHEC on September 29, 1997. Quality control analytical sampling of the treated soil was conducted throughout the solidification activities. The quality assurance/quality control program was in conformance with EPA and State standards; therefore, EPA and the State determined that all analytical results were accurate to the degree needed to assure satisfactory execution of the RA and are consistent with the ROD and the RD plans and specifications.

Cleanup Goals

Site soils have been treated to prevent further leaching of contamination into the ground water. Additional sampling conducted by EPA showed only one remaining ground water COC that was consistently detected above drinking water standards in two small, localized areas, one of which was near drinking water standards. As a result of these soil and ground water findings, EPA issued an additional AROD on September 9, 1998, changing the ground water remedy from pump and treat, which was never implemented, to MNA. The Preliminary Close-out Report (September 14, 1998), and the Operation and Maintenance (O&M) Plan (September 1998) were approved by EPA and SCDHEC. The Preliminary Close-out Report found that there was no definable contaminant plume on site. In January of 2013, the EPA conducted a scientific evaluation of the durability and leachability of the monolith at the Site. The objective of the report was to determine the durability of the S/S wastes (the monolith) based on physical measurements (moisture content, bulk and dry density, permeability, wet/dry durability). The evaluation indicates that the monolith has remained stable in the environment during the 20 year period since completion of the remedial action. No evidence indicating any adverse change in physical condition was observed. Some evidence of the capacity for leaching of cement binder and COCs from the monolith was indicated; however, the leaching would be expected to be very minor and not likely indicative of a possibly adverse condition, either presently or long-term, or with regard to groundwater contamination. Testing and analyses supports the conclusion that COCs remain highly bound within the monolith and that leaching of these COCs is unlikely to adversely impact the surrounding soil and/or groundwater environment under current site conditions.

Operation and Maintenance

The 1998 AROD reported that long-term O&M of the remedy was not required. There were no O&M costs associated with the Site since the 2004 FYR. The declaration of covenants and restrictions on the property was made and entered into on October 11, 2001, by Pile Drivers, Inc, a South Carolina Corporation. Pile Drivers is the owner of the property in Charleston County, South Carolina, more specifically described in the Title of Real Estate record in the book W127 at page 390 in the Charleston County RMC Office. The declaration of covenants and restrictions to restrict use of the site soils and ground water states the following: ''Pile Drivers hereby covenants for itself, its successors and assigns, that the Soil Treatment Area shall not be used for residential or agricultural purposes; prohibit activities, include but are not limited to: Filling; drilling; excavation; anchoring; removal of top soil, rock, or minerals; plowing; planting; cultivation (other than maintenance of the ground cover); and change of the topography in any manner.''

Five-Year Review

The remedy at the Geiger (C & M Oil) Site currently protects human health and the environment because exposure pathways that could result in unacceptable risks are being controlled. Soils have been cleaned up to industrial standards using S/S, the property is currently being used for industrial purposes, and ground water sampling results over multiple years led to decommissioning 27 monitoring wells. Five-year reviews (FYR) are statutorily required as long as waste is left on site that does not allow for unrestricted use and unlimited exposure. Three FYRs have already been completed and the next FYR is planned for FY 2014.

Community Involvement

On August 15, 2008, a public notice was published in the *Post and Courier* Announcing the commencement of the third FYR process for the Geiger site, providing contact information for EPA site staff, and inviting community participation. Copies of this document are available in the Site's public repository: St. Paul's Parish Library,

5151 Town Council Drive, Hollywood, SC 29449, where additional information about the Site can be found in CD format. Community involvement activities associated with the deletion will consist of issuing a deletion fact sheet, publishing a public notice in the local newspaper, updating the information repository, and providing the public an opportunity to comment.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. The implemented remedy achieves the degree of cleanup specified in the ROD and ROD Amendments for all pathways of exposure. All selected remedial action objectives and clean-up goals are consistent with agency policy and guidance. EPA, in consultation with the State of South Carolina, has determined that all required response actions have been implemented and no further response action by the responsible parties is appropriate.

V. Deletion Action

The EPA, with concurrence of the State of South Carolina through the South Carolina Department of Health and Environmental Control has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective January 6, 2014 unless EPA receives adverse comments by December 5, 2013. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct Final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 23, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Geiger (C&M Oil)'', ''Rantoules, South Carolina''.

[FR Doc. 2013–26512 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 12–357; FCC 13–88]

H Block Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, in response to an emergency request, for a period of six months, the information collection on FCC Form 175 implementing new rule section 1.2105(a)(2)(xii) adopted by the Commission in the *Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915–1920 MHz and 1995–2000 MHz Bands Report and Order (Report and Order),* FCC 13–88. This notice is consistent with the *Report and Order,* which stated that the rule would become effective upon Commission publication of a document in the **Federal Register** announcing its approval by OMB.

DATES: The rule amending 47 CFR 1.2105(a)(2)(xii), published at 78 FR 50214, August 16, 2013, is effective November 5, 2013.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Federal Communications Commission, at (202) 418–2918, or email: *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on September 17, 2013, OMB approved, in response to an emergency request, for a period of six months, a revision to the previously-approved information collection on FCC Form 175 to implement new section 1.2105(a)(2)(xii) of the Commission's rules, 47 CFR 1.2105(a)(2)(xii), adopted in the *Report and Order,* FCC 13–88, 78 FR 50214, August 16, 2013. The OMB Control Number is 3060–0600. The Commission publishes this notice as an announcement of the effective date of § 1.2105(a)(2)(xii).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on September 17, 2013, for the revised information collection required by a modification to 47 CFR 1.2105 (a)(2).

Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0600. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0600.

OMB Approval Date: September 17, 2013.

OMB Expiration Date: March 14, 2014.

Title: Application to Participate in an FCC Auction, FCC Form 175.

Form Number: FCC Form 175.

Respondents: Business or other for-profit entities; not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 500 per year (estimated average for 3 years for all respondents under the previously-approved collection on FCC Form 175), with an estimated 350 of such respondents required to respond to the revised collection.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 750 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: The information to be collected will be made available for public inspection and the Commission is not requesting that respondents submit confidential information on FCC Form 175. However, to the extent that a respondent seeks to have certain information collected on FCC Form 175 withheld from public inspection, the respondent may request materials or information submitted to the Commission be given confidential treatment under *47 CFR 0.459* of the Commission's rules.

Needs and Uses: The FCC Form 175 is used by the public to apply to participate in competitive bidding (auctions) for Commission licenses and permits. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held, to determine whether each applicant satisfies the Commission's requirements to participate in the auction and, if applicable, is eligible for the status as the particular type of auction participant it requested. The Commission has revised the information collection on FCC Form 175 to add an additional certification required by new section 1.2105(a)(2)(xii) of the Commission's rules, 47 CFR 1.2105(a)(2)(xii), which was adopted by the Commission in the *Report and Order to implement* Section 6004 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, sec. 6004, 125 Stat. 156, 222–223, codified at 47 U.S.C. 1404 (2012) (2012 Spectrum Act). New section 1.2105(a)(2)(xii) requires a party seeking to participate in any auction conducted pursuant to the 2012 Spectrum Act to certify in its application, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant and thus statutorily prohibited from participating in such a Commission auction. The revised collection will enable the Commission to comply with Section 6004 and determine whether an applicant's participation in an auction conducted pursuant to the 2012 Spectrum Act is consistent with Section 6004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–26576 Filed 11–4–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 27, 73, and 74

[MM Docket No. 93–177; FCC 13–115]

An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Denial of Petition for Reconsideration.

SUMMARY: In this document, the Commission adopted a single protection scheme for tower construction and modification near AM tower arrays and designated ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. The Commission also dismissed in part as moot and denied in all other respects a petition for reconsideration of the Second Report and Order in MM Docket No. 93–177.

DATES: Effective December 5, 2013, except for amendments to 47 CFR 1.30002, 1.30003, 1.30004, 73.875, 73.1675, and 73.1690, which contain new and revised information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

Applicability Date: The applicability date of the amendments 47 CFR 1.30000, 1.30001, 22.371, 27.63, 73.45, 73.316, 73.685, 73.1692, 73.6025, and 74.1237 is indefinitely delayed. The FCC will publish a document in the **Federal Register** announcing the applicability date.

ADDRESSES: Peter Doyle or Susan Crawford, Federal Communications Commission, Media Bureau, Audio Division, 445 12th Street SW., Washington, DC 20445.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Chief, Media Bureau, Audio Division, (202) 418–2700 or *Peter.Doyle@fcc.gov;* or Susan Crawford, Assistant Division Chief, Media Bureau, Audio Division, (202) 418–2700 or *Susan.Crawford@fcc.gov.*

For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Third Report and Order (Third R&O), FCC 13–115, adopted August 14, 2013, and released August 16, 2013. The full text of the Third R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Paperwork Reduction Act of 1995 Analysis

This Third R&O adopts new and revised information collection requirements, subject to the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13, 109 Stat 163 (1995) (codified in 44 U.S.C. 3501–3520)). These information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new and revised information collection requirements adopted in this document. The requirements will not go into effect until OMB has approved them and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Summary of Third Report and Order and Second Order on Reconsideration

1. In the Third R&O, the Commission furthered the initiative to simplify the Media Bureau's licensing procedures. This Order harmonizes and streamlines the Commission's rules regarding tower

construction near AM stations in two respects. First, the Order establishes a single protection scheme for tower construction and modification near AM tower arrays. Second, the Order designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. These actions take another step in the Commission's modernization by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practice.

I. Background

2. In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. The Commission's rules contain several sections concerning tower construction near AM antennas that are intended to protect AM stations from the effects of such tower construction, specifically, 47 CFR 73.1692, 22.371, and 27.63. These existing rule sections impose differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as part 90 (Private Land Mobile Radio Services) and part 24 (Personal Communications Services), entirely lack provisions for protecting AM stations from possible effects of nearby tower construction.

3. The Second Further Notice of Proposed Rulemaking (Second Further Notice) in this proceeding (73 FR 75376), tentatively concluded that the issue of tower construction or modification near AM stations should be addressed by a single set of rules applying to all tower construction and sought comment on proposed new rules which would appear in part 1 of the Commission's rules. The new rules are based on proposals by an ad hoc technical group of radio broadcasters, equipment manufacturers, and broadcast consulting engineers, acting collectively as the AM Directional Antenna Performance Verification Coalition (Coalition).

II. Discussion

4. In the Second Further Notice, the Commission requested comment on the proposal to adopt a uniform set of rules applicable to all services, the use of moment method modeling to assess the effects of tower construction or modification near AM stations, as well as a number of issues that could establish limits on the scope of the new rules and the technical and/or policy grounds for such limits. Specifically, the Commission sought comment on: (1) The proposed exclusion of short towers and antenna structures mounted on buildings from AM proximity analysis; (2) the proper notification procedures to AM stations regarding nearby tower construction; (3) a rule provision to cover circumstances that would be otherwise excluded from the new rules; (4) the structures subject to the new rules; and (5) the proposed application of the new rules to towers constructed or substantially modified after the rules' effective date.

5. *Threshold Heights and Exclusion of Building-Mounted Antennas.* The proposed rules excluded short towers from AM proximity analysis on the grounds that such towers are inefficient re-radiators that would not generally affect an AM pattern. Most commenters agree with the proposed threshold heights of 36 electrical degrees for a directional antenna and 60 electrical degrees for a non-directional antenna. Two commenters, however, propose lower threshold heights. Greater Media urges the Commission to reduce the non-directional antenna threshold height from 60 to 36 electrical degrees and adopt a more stringent 1 decibel (dB) pattern distortion threshold. Cohen, Dippell and Everist, P.C. (CDE) recommends that a 20 degree electrical height be used in lieu of the 36 electrical degree height proposed for directional antennas. These commenters, however, offer no analytical support for their alternative proposals. In contrast, our threshold height limits are premised on extensive staff modeling studies and modeling studies previously submitted by the Association of Federal Communications Consulting Engineers. The Commission's proposed 2 dB pattern distortion threshold, which was supported by the majority of commenters, is the criterion utilized in assessing the circularity of a nondirectional pattern in other broadcast services. Accordingly, we adopt the 2 dB pattern distortion threshold and the threshold heights of 36 electrical degrees for a directional antenna and 60 electrical degrees for a non-directional antenna, and therefore, exclude shorter towers from consideration.

6. Similarly, the proposed rules excluded all antenna structures mounted on buildings from AM proximity analysis. The Joint Commenters, while agreeing in substance with the exclusion of building-mounted antennas, suggest a modification of the proposed rule. The Joint Commenters warn that, in some cases, buildings may support towers tall enough to be significant re-radiators at an AM frequency. According to the Joint Commenters, ''[s]ignificant tower structures can be mounted on buildings, and [we] are aware of several instances where the height of a microwave or other type of tower actually exceeds the height of the building on which the tower is mounted.'' Therefore, the Joint Commenters suggest that the new rules should apply to any tower that would increase ''the overall physical height of a building by more than 10 electrical degrees.'' We acknowledge the Joint Commenters' concern regarding taller towers atop buildings, and we agree that the proposed categorical exemption of all antennas mounted on buildings is overly broad, and therefore, could potentially expose AM stations to adverse pattern distortions. We believe, however, that the criterion of 10 electrical degrees is not a practical solution because: (1) It is difficult, if not infeasible, to predict and accurately measure re-radiation from a building; and (2) it is impossible to detune a building and similarly, impossible to detune the combination of a building and a tower. Accordingly, because it is not feasible to analyze the combined effects of the building and tower, we believe that it is more appropriate to consider the potential effects of a tower separately from any building on which it is mounted. We therefore revise the rule to exclude most antenna structures atop buildings, except where the antenna structure alone would be a significant re-radiator as defined in 47 CFR 1.30002(a) or (b).

7. *Notification.* Commenters were divided on the provisions of the proposed rules requiring 30 days' prior notice of tower construction, including significant tower modifications, to a nearby AM station. Greater Media considers the proposed 30-day notice period too short, advocating instead for a 120-day notice period. PCIA prefers that the rules require no minimum notice when tower construction is deemed not to affect the AM pattern. Alternatively, PCIA supports procedures for expedited notice to reduce delays. The Joint Commenters support the 30-day notice proposal, but also suggest procedures for expedited notice of tower construction, citing similar provisions in the Commission's rules governing fixed microwave services in Part 101 of the Rules. Further, the Joint Commenters recommend that the rules incorporate a narrow exception to the prior notice requirement to address

''urgent but temporary needs in the event of an emergency situation.'' Finally, the Joint Commenters propose that the rules include detailed notification procedures, explicitly listing the information to be included in the notice, such as a physical description of the planned construction, and adding a requirement for a response by the affected AM station. We agree with the Joint Commenters' proposals, and accordingly, adopt the 30-day notification period, with the addition of specific notification procedures, requests for expedited notice, and an emergency exception. We believe this represents a reasonable compromise between the competing proposals. A 30-day notification period, in lieu of the 120-day period proposed by Greater Media, will minimize unnecessary deployment delays. The detailed notification procedures will enable AM stations to effectively assess the impact of the proposed construction within the shorter 30-day period. Finally, the expedited notice process we adopt should allay PCIA's concerns and reduce construction delays. We believe these new notification procedures, which are based on existing Commission rules, will reduce the potential for disputes, provide adequate notice to AM licensees, and enable affected AM licensees to more easily verify the proponent's analysis without unnecessary duplication of work.

8. The Commission also sought comment on the point in the AM licensing process at which the notification procedures should apply. Specifically, the Second Further Notice asked whether a tower proponent should be required to notify the permittee of an unconstructed AM station, or whether notification procedures should apply only when the AM station is licensed or operating pursuant to Program Test Authority (PTA) prior to construction of the nearby structure. In the absence of any comments on this issue, we will apply the notification procedures to AM stations that are licensed or operating pursuant to PTA. We will not require a tower proponent to notify the permittee of an unconstructed AM station. Because the facilities authorized by AM station construction permits often remain unconstructed when the permit expires or the permits are modified before the authorized facilities are constructed, we believe it would be unproductive to require tower proponents to analyze and protect unconstructed AM facilities. Moreover, because both the field strength measurements described in 47 CFR 1.30002(f) and the adjustment of a detuning network require the presence of the AM signal, we feel that this interpretation reasonably balances the interests of the AM station with those of the tower proponent.

9. *Determination of distance from a directional AM station.* A non-directional AM antenna consists of a single tower, the coordinates of which appear in Commission databases. Directional AM antennas, on the other hand, consist of multiple towers, which may be several hundred meters apart. The relatively large spacing between directional AM towers leaves some potential for confusion when determining distances from a directional AM station. The proposed new rules require that proponents of new towers or significant modifications to existing towers examine the potential effects of the proposed construction activity on the nearby AM directional station if the tower is ''within the lesser of 10 wavelengths or 3 kilometers of the AM [directional] station.'' The proposed rules, however, do not specify the measuring point from which to calculate these critical distances. The Joint Commenters and Waterford each suggest clarifying the determination of distance from a directional AM station by specifying that the array center coordinates now used in the Consolidated Database System (CDBS), the Media Bureau's database, should be used for such calculations. We agree, and revise the rule accordingly. This minor clarification is essential to facilitate compliance and mitigate confusion when determining distances, and is therefore a logical and necessary outgrowth of the proposed rules.

10. *Towers that are excluded from the pre-construction evaluation.* The Second Further Notice sought comment on a rule provision to cover towers that are excluded from the routine pre-construction study and notification to the AM licensee, but that nonetheless affect an AM station's radiation pattern. For example, there may be circumstances in which a tower more than 3 kilometers away may nevertheless affect a directional AM station. Similarly, a short tower or tower modification that would be otherwise excluded from study may affect an AM station if it is very close to the AM antenna. Commenters were divided on this issue. According to Waterford, ''the proposed rules leave the tower proponents' responsibilities open-ended'' in these situations. Waterford asserts that tower proponents need to have their financial obligations clearly defined from the outset and that mandating ''clear documentation at or very near the time of construction about the need to detune'' would provide tower proponents with more certainty. Greater Media supports the proposed rule provision, stating that ''there are no absolutes in such situations.'' The Joint Commenters support the proposed rule provision with modifications. They advocate defining the type of analysis that would constitute a credible showing that the tower construction has affected the AM station. Specifically, the Joint Commenters recommend that the AM station must supply either a moment method analysis or field strength measurements to support its claim. The tower proponent, according to the Joint Commenters, should be afforded an opportunity to respond to the AM station's showing of adverse impact. Finally, the Joint Commenters propose that the rule include a two-year time limit within which the AM station must make a claim of adverse impact.

11. We agree that the proposed rule should be modified. Defining the type of showing required from an AM station when an otherwise excluded tower construction or modification affects the station's radiation pattern and requiring the AM station to share the study with the tower proponent, as the Joint Commenters suggest, will facilitate resolution of possible problems. We also acknowledge the difficulties of potentially open-ended financial obligations, as Waterford notes. A reasonable time limit on claims of adverse impact will encourage AM station licensees to promptly identify potential pattern disruptions and provide tower proponents with greater certainty regarding future potential liabilities. We find, however, that a time limit of less than two years will not allow an AM station licensee sufficient time to ascertain that its pattern has been adversely affected, identify the source of the pattern disruption, and prepare and submit an adverse impact showing. We therefore require that showings of adverse impact under this rule section be made within two years after the date of completion of the tower construction or modification. We find that a two-year time limit fairly balances the interests of AM stations and tower proponents. The two-year time frame will protect the interests of AM stations while relieving tower proponents of long-term financial obligations. New 47 CFR 1.30002(g) includes these modifications to the proposed rule.

12. *Structures subject to the rules.* The Second Further Notice proposed to apply the revised rules to construction of all communications towers falling within established geographic limits and above a specified height, not only

to towers requiring notice to the Federal Aviation Administration and registration under part 17 of the rules. The Commission sought comment on whether the Commission may apply the proposed rules to the owners of structures that are not otherwise subject to Commission licensing processes, such as towers that do not require registration and which no Commission licensee, permittee or applicant uses or proposes to use. The Second Further Notice asked whether, alternatively, the Commission should prohibit applicants from proposing and licensees or permittees from using a tower when the owner has not complied with notice and detuning requirements. The Joint Commenters support applying the new rules to either all tower owners or, alternatively, to all Commission licensees proposing to use towers that may fall under the provisions of the new rules. Greater Media and CDE also favor applying the new rules to non-licensee tower owners.

13. Many structures other than communications towers may re-radiate an AM signal, *e.g.*, water towers, power lines, and buildings. Furthermore, the parties that construct both registered towers and towers that do not require registration may or may not be Commission authorization holders, and a tower may or may not house a Commission licensee at the time of construction. The Second Further Notice sought comment on whether the Commission should assert jurisdiction over non-licensee tower owners and whether the towers, as incidental radiators, would be subject to part 15 restrictions. No party addressed the issue of the Commission's jurisdiction over non-licensees who build towers and other structures near AM stations. Greater Media, the only commenter to address these issues, expressed its belief that ''such structures would very likely fall within the restrictions of part 15 in regard to incidental radiators,'' but offered no support for its contention. While the Commission's jurisdictional authority over non-licensees is well established for certain purposes, we find it administratively prudent to apply the rules only to applicants, licensees, and permittees. We adopt the Second Further Notice proposal that will bar applicants from proposing and licensees and permittees from using towers that have not completed our revised study and notice process and any necessary detuning. We clarify that under this rule, a licensee or permittee may locate an antenna on a tower that did not complete this process prior to construction if either the tower owner or any collocator completes all the required steps before the licensee's or permittee's collocation. Similarly, we prohibit a licensee or permittee from locating an antenna on a tower that an AM station owner has shown creates a disturbance to its radiation pattern unless appropriate remedial action has been taken. We find this approach promotes the public interest in maximizing collocation opportunities for wireless and broadcast licensees and permittees because it: (1) Provides an incentive for all tower owners to complete the study and notice process before construction in order to make the tower most readily available for collocation; (2) provides an avenue through which towers that do not complete the process before construction may become available for collocation; and (3) avoids interfering with contractual or other business arrangements between Commission authorization holders and non-authorization holder tower owners.

14. *Application of the new rules.* The Second Further Notice tentatively concluded that any new rules adopted should be applied only to towers constructed or modified after the effective date of the new rules, i.e., where actual construction commences after the effective date. Commenters addressing this issue were divided. Greater Media supports this approach, while Ronald L. Myers suggests ''making this rule retroactive.'' Crawford recommends that, if the Commission applies the new rules only to towers constructed or modified after the new rules' effective date, the Commission should also: (1) Clarify and identify how it will respond to pending formal tower complaints, and (2) employ language to ''deal with existing situations wherein AM stations must operate with STA because of uncoordinated antenna structure construction near their arrays.''

15. We affirm the tentative conclusion to apply the new rules to towers constructed or modified after the effective date of the new rules, an approach supported and/or unopposed by the majority of commenters. In addition, as explained below, we will apply the new rules' remediation requirement to construction commenced before the effective date, except that pending complaints will be resolved in accordance with any pre-existing rules that are applicable to the service in question. New 47 CFR 1.30002(h) includes this modification to the proposed rules. Consistent with the other rules adopted in this proceeding, the rules will only apply to Commission applicants, permittees, and licensees, and, in accordance with the ''newcomer'' policy, will only apply to construction or modification that has adversely affected preexisting AM stations, i.e., stations that were operating before the tower proponent commenced construction or modification. Although the new rules will not apply to tower owners that are not applicants and do not hold Commission authorizations, this does not mean that a Commission licensee or permittee can locate an antenna on such a tower with no obligations. Rather, we clarify that as of the effective date of the new rules, a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on an existing tower that is causing a disturbance to the radiation pattern of an AM station, as defined in 47 CFR 1.30002(a) or (b), and that has not previously been studied for AM radiation pattern disturbance, unless the applicant, licensee, permittee or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower.

16. We recognize that there may be circumstances in which an AM station has been adversely affected by tower construction or modification authorized and either commenced or completed before or on the effective date of the new rules. The Commission's longstanding ''newcomer'' policy obligates FCC licensees to remedy interference caused to existing stations. We acknowledge, however, that the current absence of explicit rules across all services with respect to tower construction near AM arrays has led to confusion as to what should be done to protect the AM station, and therefore, inconsistent protection to AM stations. Accordingly, we direct any affected AM station seeking remediation to submit a showing that its operation has been adversely affected by tower construction or modification authorized and either commenced or completed before or on the effective date of the new rules. Such showings must be made within one year after the effective date of the new rules. A one-year time frame will allow a potentially affected AM station sufficient time to identify the source of the pattern disruption and prepare and submit an adverse impact showing. We authorize the Commission staff, if necessary, to direct the tower owner to take appropriate ameliorative action to correct disturbances to the radiation pattern of an AM station caused by the tower construction or modification, such as installing, maintaining, and, if

necessary, adjusting any detuning apparatus necessary to restore proper operation of the AM antenna. This rule change does not impose any new obligations on licensees or permittees with respect to disturbances caused to AM antenna patterns. It does not alter the tower owner's underlying responsibility to cooperate and remediate interference caused to existing AM stations. Rather, this change simply clarifies and codifies this implicit remediation obligation, or the ''newcomer'' policy, a mainstay of interference protection.

III. Second Order on Reconsideration

17. In response to the Second Report and Order in this proceeding, 73 FR 64558, which adopted rules permitting AM radio licensees to use computer modeling techniques to demonstrate that directional AM antennas perform as authorized, CDE filed a timely petition for reconsideration seeking clarification and alteration of the new rules. CDE claims that the new rules adopted in the Second Report and Order do not clearly define what information an AM station should submit with a moment method proof of performance pursuant to 47 CFR 73.151(c), and also do not explain how the Commission will determine whether such a proof of performance is acceptable. CDE urges the Commission to clarify these questions with a Public Notice. Finally, CDE reiterates comments it made earlier in this proceeding, questioning directional AM stations' use of computer modeling techniques, given that such techniques do not account for certain effects of the local environment on the AM antenna pattern.

18. As CDE suggests, the new rules adopted in the Second Report and Order represent a significant departure from long-established procedures in AM radio. In order to assist licensees, on October 29, 2009, the Media Bureau released a Public Notice clarifying certain requirements of the new rules and answering common questions. Accordingly, CDE's request to the same effect is now moot. Moreover, the Media Bureau's experience with the new rules since the Public Notice indicates that most applicants understand the requirements, and the Bureau stands ready to answer additional questions. Finally, regarding CDE's repeated concern about the use of moment method techniques without regard to the local environment, the Commission addressed this matter in the Second Report and Order. It is well established that the Commission does not grant reconsideration for the purpose of debating matters on which it has already deliberated. We therefore dismiss in part as moot and deny in all other respects CDE's Petition for Reconsideration.

Final Regulatory FlexibilityAnalysis

19. As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice to this proceeding. The Commission sought written public comment on the proposals in the Second Further Notice, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604.

Need for, and Objectives of, the Report and Order

20. In the Third R&O in this proceeding, the Commission harmonizes and streamlines the Commission's rules regarding tower construction and modification near AM stations, incorporating moment method computer modeling techniques and simplifying the rule provisions. The new procedures were adopted in order to simplify the Media Bureau's licensing procedures.

21. The further rulemaking proceeding leading to the Third R&O was initiated to further reduce the regulatory burden on AM broadcasters by permitting the use of computer modeling techniques to verify AM directional antenna performance. In the Second Further Notice, the Commission tentatively concluded that the issue of tower construction and modification near AM stations should be addressed by a single rule applying to all tower construction and sought comment on proposed new rules which would appear in part 1 of the Commission's rules.

22. Existing Commission rules require Commission authorization holders to notify AM stations and take appropriate action when a tower is constructed within a fixed distance of an AM station. The new rules define the critical distance for directional AM stations as any distance less than ten wavelengths of the frequency of the AM station up to a maximum distance of three kilometers, as specified in existing rules for certain wireless licensees. The rules designate moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The rules also allow traditional partial proof measurements taken before and after tower construction as an alternative procedure when the AM station in question was licensed pursuant to field strength measurements. Lastly, the rules eliminate short towers from consideration and exclude many routine cases in which antennas are added to existing towers.

23. More specifically, the Commission adopted a threshold height for antennas, excluding most antenna structures atop buildings, except where the structure alone would be a significant re-radiator as defined in 47 CFR 1.30002(a) or (b). It also adopted a 30-day period in which those who build or modify a tower can notify an AM station in order to reduce the potential for disputes while providing adequate notice to AM licensees. Per one commenter's suggestion, the Commission added specific procedures including requests for expedited notice. In the absence of comments on the issue of when the notification procedures would apply, the Commission adopted its proposal to apply the notification procedures to AM stations that are licensed or operating pursuant to program test authority. It clarified the determination of distance from a directional AM station by specifying the use of the array center coordinates now used in the consolidated database system. It further adopted the rule provision in 47 CFR 1.30002(g) addressing tower construction otherwise excluded, with certain modifications. In general, the Commission will apply the notification requirements only to Commission applicants, licensees, and permittees prospectively for towers constructed after the effective date of the new rules, but there may be circumstances in which an AM station has been adversely affected by prior tower construction. In such circumstances, the affected AM station may seek relief by filing a showing of adverse impact within two years of the effective date of the new rules, and the Commission may direct the tower owner to install and maintain any detuning apparatus necessary to restore proper operation of the AM station.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

24. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the

rules adopted herein. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

26. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

27. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

28. *Non-Licensee Tower Owners.* Many communications towers, while used to support multiple antennas for Commission licensees in various services, are owned by entities which are not themselves Commission licensees. Although tower owners that do not hold Commission authorizations are not directly responsible for complying with the new rules, Commission authorization holders cannot lease space and locate an antenna on a non-licensee's tower that is causing a disturbance to the radiation pattern of an AM station, unless the applicant, licensee, or tower owner takes appropriate ameliorative steps to correct the disturbance. Therefore, tower owners that do not hold Commission authorizations may be indirectly affected by the rules adopted in this proceeding. Communications towers fall into two categories: those requiring antenna structure registration, and those exempt from registration. The Commission's rules require that any entity proposing to construct an antenna structure over 200 feet or within the glide slope of an airport must register the antenna structure with the Commission on FCC Form 854. As of September 3, 2008, there were 97,617 registration records in a 'Constructed' status and 13,047 registration records in a 'Granted, Not Constructed' status in the Antenna Structure Registration (ASR) database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed new rules. Moreover, the SBA has not developed a size standard for small businesses in the category ''Tower Owners.'' Therefore, we are unable to estimate the number of non-licensee tower owners that are small entities. We assume, however, that nearly all non-licensee tower companies are small businesses under the SBA's definition for cellular and other wireless telecommunications services.

29. *Radio Broadcasting.* The policies adopted in the Third R&O apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on as of January 31, 2011, about 10,820 (97 percent) of 11,100 commercial radio stations) have revenues of $7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

30. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

31. *FM Translator Stations and Low Power FM Stations.* The new rules apply to licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as to potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7.0 million in annual receipts. Currently, there are approximately 6,105 licensed FM translator and booster stations and 824 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

32. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual

receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,995. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

33. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Record Keeping and Other Compliance Requirements

34. The Third R&O establishes a single protection scheme for tower construction near AM tower arrays and designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. Overall, the changes we are adopting are designed to simplify the requirements of the existing rules and reduce the time and expense required to determine the impact of nearby tower construction or significant modification on affected AM stations. Specifically, although the new rules require modest engineering analysis, the use of computer modeling is less onerous, time consuming, and costly than the existing proof of performance requirements. By eliminating short towers from consideration and excluding many routine cases in which antennas are added to existing towers, the new rules reduce the regulatory burdens. The new rules will modify and reduce the overall reporting, recordkeeping, and compliance requirements of tower proponents and AM station licensees and permittees. The requirements, detailed below, will affect small and large companies equally.

35. The new rules require a party proposing to construct a new tower or significantly modify an existing tower within the pertinent critical distance (the ''tower proponent'') to provide notice to the AM station at least 30 days prior to the planned commencement of construction. The notification must include the following information: (1) The tower proponent's name and address; (2) coordinates of the tower to be constructed or modified; (3) physical description of the planned construction; and (4) results of the analysis showing the predicted effect on the AM pattern, if performed. Responses to a notification must specify the technical details and be provided to the tower proponent within 30 days.

36. The rules designate moment method modeling as the principal means of determining whether a nearby tower affects an AM pattern. The rules, however, allow traditional ''partial proof'' measurements taken before and after tower construction as an alternative procedure when the potentially affected AM station was licensed pursuant to field strength measurements, as opposed to computer modeling. The tower proponent is responsible for the installation and maintenance of any detuning apparatus necessary to restore the AM station's radiation pattern.

37. The new rules permit AM stations to submit a showing that tower construction not otherwise subject to the notice and remediation requirements has affected the AM station operations. The showing must consist of either a moment method analysis or field strength measurements and be provided to the tower proponent or owner and to the Commission either (1) within two years after the date of completion of the tower construction or modification, or (2) in the case of operation adversely affected by tower construction or alteration that occurred prior to the effective date of the new rules, within one year of the effective date of the new rules. The Commission, if necessary, can direct the tower proponent or owner to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

38. AM station licensees will continue to be required to file FCC Form 302–AM before or simultaneously with any license application associated with installations on the AM antenna or within 30 days after the completion of the installation.

Steps Taken To Minimize Significant Impact of Small Entities, and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that might minimize any significant impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

40. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above. In the Third R&O, the Commission revised certain provisions of the proposed rules set forth in the Second Further Notice in response to concerns expressed by commenters, several of whom represent small entities. We believe that the new rules will reduce the compliance burden on most Commission licensees, and that this reduction will be particularly beneficial to small entities.

41. Specifically, the Second Further Notice proposed to cover circumstances that would be otherwise excluded from the AM proximity rules. For example, there may be circumstances in which a tower more than 3 kilometers away may affect a directional AM station. Similarly, a short tower that would be otherwise excluded from study may affect an AM station if it is very close, *i.e.,* within the near field of the AM antenna. Commenters, including small entities, were divided on this issue. According to Waterford Consultants, ''the proposed rules leave the tower proponents' responsibilities open-

ended.'' Waterford asserted that tower proponents need to have their financial obligations clearly defined from the outset. Greater Media supported the rule provision, stating that ''there are no absolutes in such situations.'' The Joint Commenters supported the rule provision with modifications. They advocated defining the type of analysis that would constitute a credible showing that the tower construction has affected the AM station. In particular, the Joint Commenters recommended that the AM station must supply either a moment method analysis or field strength measurements to support its claim. The tower proponent, according to the Joint Commenters, should be afforded an opportunity to respond to the AM station's showing of adverse impact. Finally, the Joint Commenters proposed that the rule include a two-year time limit within which the AM station must make a claim of adverse impact.

42. We adopted the rule provision in 47 CFR 1.30002(g) addressing tower construction otherwise excluded, with certain modifications. We felt that defining the type of showing required from an AM station and requiring the AM station to share the study with the tower proponent, as the Joint Commenters suggest, would facilitate resolution of possible problems. We also acknowledged the burden of potentially open-ended financial obligations, which would affect small entities. We therefore required that showings of adverse impact under this rule section be made within two years of the date of the tower construction or significant modification.

43. We believe that the rule provision discussed above offers significant benefits to small entities. It facilitates conflict resolution between the parties, which allows small entities to resolve issues on a grassroots level. We believe it adopts a more economically advantageous method of conflict resolution because it is likely to be faster, more informal, and may avoid the time and expense of hiring legal or technical counsel. The new rule also limits the time frame in which showings of adverse impact can be made, which benefits small entities because it avoids open-ended financial obligations. Lastly, the rule gives examples of appropriate showings required from an AM station. Such examples give predictability and allow small entities to plan, which can help limit the economic impact of making an adverse impact showing. Accordingly, by adopting policies that are more specific, including examples and a time line, the Commission adopted a rule that imposes a substantially less significant economic impact.

Report to Congress

44. The Commission will send a copy of the Third R&O, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801(a)(1)(A)). In addition, the Commission will send a copy of the Third R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Third R&O and FRFA (or summaries thereof) will also be published in the **Federal Register** (See 5 U.S.C. 604(b)).

Ordering Clauses

45. Accordingly, *it is ordered,* that, pursuant to the authority contained in sections 1, 4(i) 303, 308, 309, 310, and 319 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 303, 308, 309, 310, and 319, this Third Report and Order *is adopted.*

46. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) 303, 308, 309, 310, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 308, 309, 310, and 319, 47 CFR parts 1, 22, 27, 73, and 74 of the Commission's rules *are amended,* as set forth herein.

47. *It is further ordered* that the Petition for Reconsideration filed December 1, 2008, by Cohen, Dippell and Everist, P.C. *is dismissed in part as moot and is denied in all other respects.*

48. *It is further ordered* that the rules contained herein *shall become effective* upon Commission publication of a document in the **Federal Register** announcing that OMB has approved them.

List of Subjects in 47 CFR Parts 1, 22, 27, 73, and 74 Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1, 22, 27, and 73 to read as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, and 1451.

■ 2. Sections 1.30000 through 1.3000 are added to Subpart AA, to read as follows:

Subpart AA—Disturbance of AM Broadcast Station Antenna Patterns

* * * * *

Sec.

§ 1.30000 Purpose.

This rule part protects the operations of AM broadcast stations from nearby tower construction that may distort the AM antenna patterns. All parties holding or applying for Commission authorizations that propose to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or propose to install an antenna on an AM tower, are responsible for completing the analysis and notice process described in this subpart, and for taking any measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occur as a result of the tower construction or modification or as a result of the installation of an antenna on an AM tower. In the event these processes are not completed before an antenna structure is constructed, any holder of or applicant for a Commission authorization is responsible for completing these processes before locating or proposing to locate an antenna on the structure, as described in this subpart.

§ 1.30001 Definitions.

For purposes of this subpart:

(a) *Wavelength at the AM frequency.* In this subpart, critical distances from an AM station are described in terms of the AM wavelength. The AM wavelength, expressed in meters, is computed as follows:

(300 meters)/(AM frequency in megahertz) = AM wavelength in meters.

For example, at the AM frequency of 1000 kHz, or 1 MHz, the wavelength is (300/1 MHz) = 300 meters.

(b) *Electrical degrees at the AM frequency.* This term describes the height of a proposed tower as a function of the frequency of a nearby AM station. To compute tower height in electrical degrees, first determine the AM wavelength in meters as described in paragraph (a) of this section. Tower height in electrical degrees is computed as follows: (Tower height in meters)/(AM wavelength in meters) × 360 degrees = Tower height in electrical degrees. For example, if the AM

frequency is 1000 kHz, then the wavelength is 300 meters, per paragraph (a) of this section. A nearby tower 75 meters tall is therefore [75/300] × 360 = 90 electrical degrees tall at the AM frequency.

(c) *Proponent.* The term proponent refers in this section to the party proposing tower construction or significant modification of an existing tower or proposing installation of an antenna on an AM tower.

(d) *Distance from the AM station.* The distance shall be calculated from the tower coordinates in the case of a nondirectional AM station, or from the array center coordinates given in CDBS or any successor database for a directional AM station.

§ 1.30002 Tower construction or modification near AM stations.

(a) Proponents of construction or significant modification of a tower which is within one wavelength of a nondirectional AM station, and is taller than 60 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would distort the radiation pattern by more than 2 dB, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the nondirectional antenna.

(b) Proponents of construction or significant modification of a tower which is within the lesser of 10 wavelengths or 3 kilometers of a directional AM station, and is taller than 36 electrical degrees at the AM frequency, must notify the AM station at least 30 days in advance of the commencement of construction. The proponent shall examine the potential impact of the construction or modification as described in paragraph (c) of this section. If the construction or modification would result in radiation in excess of the AM station's licensed standard pattern or augmented standard pattern values, the proponent shall be responsible for the installation and maintenance of any detuning apparatus necessary to restore proper operation of the directional antenna.

(c) Proponents of construction or significant modification of a tower within the distances defined in paragraphs (a) and (b) of this section of an AM station shall examine the potential effects thereof using a moment method analysis. The moment method analysis shall consist of a model of the AM antenna together with the potential re-radiating tower in a lossless environment. The model shall employ the methodology specified in § 73.151(c) of this chapter, except that the AM antenna elements may be modeled as a series of thin wires driven to produce the required radiation pattern, without any requirement for measurement of tower impedances.

(d) A significant modification of a tower in the immediate vicinity of an AM station is defined as follows:

(1) Any change that would alter the tower's physical height by 5 electrical degrees or more at the AM frequency; or

(2) The addition or replacement of one or more antennas or transmission lines on a tower that has been detuned or base-insulated.

(e) The addition or modification of an antenna or antenna-supporting structure on a building shall be considered a construction or modification subject to the analysis and notice requirements of this subpart if and only if the height of the antenna-supporting structure alone exceeds the thresholds in paragraphs (a) and (b) of this section.

(f) With respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in paragraph (c) of this section, demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring-point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

(g) Tower construction or modification that falls outside the criteria described in the preceding paragraphs is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction or modification notwithstanding the criteria set forth above. In such cases, an AM station may submit a showing that its operation has been affected by tower construction or modification. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of field strength measurements. The showing shall be provided to:

(1) The tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner; and

(2) To the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent or tower owner, if the tower proponent or tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna. An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure that has been shown to affect an AM station's operation pursuant to this subparagraph, or for which a disputed showing of effect on an AM station's operation is pending, unless the applicant, party, or tower owner notifies the AM station and takes appropriate action to correct the disturbance to the AM pattern.

(h) An AM station may submit a showing that its operation has been affected by tower construction or modification that was commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis as described in paragraph (c) of this section, or of field strength measurements. The showing shall be provided to the current tower owner and the Commission within one year of the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

(i) An applicant for a Commission authorization may not propose, and a party holding a Commission authorization may not locate, an antenna on any tower or support structure, whether constructed before or after December 5, 2013, that meets the criteria in paragraphs (a) and (b) of this section, unless the analysis and notice process described in this subpart, and any necessary measures to correct disturbances of the AM radiation pattern, have been completed by the tower owner, the party proposing to locate the antenna, or any other party, either prior to construction or at any

other time prior to the proposal or antenna location.

§ 1.30003 Installations on an AM antenna.

(a) *Installations on a nondirectional AM tower.* When antennas are installed on a nondirectional AM tower the AM station shall determine the operating power by the indirect method (see § 73.51 of this chapter). Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes by more than 2 percent (see § 73.45(c)(1) of this chapter), an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement.

(b) *Installations on a directional AM array.* Before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51 of this chapter) and request special temporary authority pursuant to § 73.1635 of this chapter to operate with parameters at variance.

(1) For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance as defined by § 73.154 of this chapter shall be conducted by the tower proponent both before and after construction to establish that the AM array will not be and has not been adversely affected. If the operating parameters of the AM array change following the installation, the results of the partial proof of performance shall be filed by the AM station with the Commission on Form 302–AM.

(2) For AM stations licensed via a moment method proof (see § 73.151(c) of this chapter), a base impedance measurement on the tower being modified shall be made by the tower proponent as described in § 73.151(c)(1). The result of the new tower impedance measurement shall be retained in the station's records. If the new measured base resistance and reactance values of the affected tower differ by more than ±2 ohms and ±4 percent from the corresponding modeled resistance and reactance values contained in the last moment method proof, then the station shall file Form 302–AM. The Form 302–AM shall be accompanied by the new impedance measurements for the modified tower and a new moment method model for each pattern in which the tower is a radiating element. Base impedance measurements for other towers in the array, sampling system measurements, and reference field strength measurements need not be repeated. The procedures described in this paragraph may be used as long as the affected tower continues to meet the requirements for moment method proofing after the modification.

(c) *Form 302–AM Filing.* When the AM station is required to file Form 302–AM following an installation as set forth in paragraphs (a) and (b) of this section, the Form 302–AM shall be filed before or simultaneously with any license application associated with the installation. If no license application is filed as a result of the installation, the Form 302–AM shall be filed within 30 days after the completion of the installation.

§ 1.30004 Notice of tower construction or modification near AM stations.

(a) Proponents of proposed tower construction or significant modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002 and 1.30003 shall provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notice shall be provided to any AM station that is licensed or operating under Program Test Authority using the official licensee information and address listed in CDBS or any successor database. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification. At a minimum, the notification should include the following:

(1) Proponent's name and address. Coordinates of the tower to be constructed or modified.

(2) Physical description of the planned structure.

(3) Results of the analysis showing the predicted effect on the AM pattern, if performed.

(b) Response to a notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days. If no response to notification is received within 30 days, the proponent may proceed with the proposed tower construction or modification.

(c) The 30-day response period is calculated from the date of receipt of the notification by the AM station. If notification is by mail, this date may be ascertained by:

(1) The return receipt on certified mail;

(2) The enclosure of a card to be dated and returned by the recipient; or

(3) A conservative estimate of the time required for the mail to reach its destination, in which case the estimated date when the 30-day period would expire shall be stated in the notification.

(d) An expedited notification period (less than 30 days) may be requested when deemed necessary by the proponent. The notification shall be identified as ''expedited'' and the requested response date shall be clearly indicated. The proponent may proceed with the proposed tower construction or modification prior to the expiration of the 30-day notification period only upon receipt of written concurrence from the affected AM station (or oral concurrence, with written confirmation to follow).

(e) To address immediate and urgent communications needs in the event of an emergency situation involving essential public services, public health, or public welfare, a tower proponent may erect a temporary new tower or make a temporary significant modification to an existing tower without prior notice to potentially affected nearby AM stations, provided that the tower proponent shall provide written notice to such AM stations within five days of the construction or modification of the tower and shall cooperate with such AM stations to promptly remedy any pattern distortions that arise as a consequence of such construction.

PART 22—PUBLIC MOBILE SERVICES

■ 3. The authority for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

§ 22.371 [Removed and Reserved]

■ 4. Remove § 22.371.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 5. The authority for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302(a), 303, 307, 309, 332, 336, 337, 1403, 1404, and 1451 unless otherwise noted.

§ 27.63 [Removed and Reserved]

■ 6. Remove § 27.63.

PART 73—RADIO BROADCAST SERVICES

■ 7. The authority for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 8. Amend § 73.45 paragraph (c) introductory text by revising the first two sentences to read as follows:

§ 73.45 AM antenna systems.

* * * * *

(c) Should any changes be made or otherwise occur which would possibly alter the resistance of the antenna system, the licensee must commence the determination of the operating power by a method described in § 73.51(a)(1) or (d). (If the changes are due to the addition of antennas to the AM tower, see § 1.30003.) * * *

* * * * *

■ 9. § 73.316 paragraph (e) is revised to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(e) Where an FM licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the FM licensee or permittee must comply with § 1.30003 or § 1.30002, depending on whether the antenna is proposed to be mounted on an AM tower (§ 1.30003) or near an AM tower (§ 1.30002).

■ 10. § 73.685 paragraph (h) is revised to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(h) Where the TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the TV licensee or permittee must comply with § 1.30003 or § 1.30002.

■ 11. Amend § 73.875 paragraph (c) introductory text by revising the last sentence to read as follows:

§ 73.875 Modification of transmission systems.

* * * * *

(c) * * * In addition, for applications filed solely pursuant to paragraphs (c)(1) or (2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002, an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, is also required.

* * * * *

■ 12. Amend § 73.1675 paragraph (c)(1) by revising the last sentence to read as follows:

§ 73.1675 Auxiliary antennas.

* * * * *

(c)(1) * * * Where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

* * * * *

■ 13. Amend § 73.1690 paragraph (c) introductory text by revising the last sentence to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(c) * * * In addition, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002, an exhibit demonstrating compliance with § 1.30003 or § 1.30002, as applicable, is also required.

* * * * *

§ 73.1692 [Removed and Reserved]

■ 14. Remove and reserve § 73.1692.

■ 15. Amend § 73.6025 by revising paragraph (c) to read as follows:

§ 73.6025 Antenna system and station location.

* * * * *

(c) Where a Class A TV licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the Class A TV licensee or permittee must comply with § 1.30003 or § 1.30002.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 16. The authority for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 17. In § 74.1237, paragraph (e) is revised to read as follows:

§ 74.1237 Antenna location.

* * * * *

(e) Where an FM translator or booster licensee or permittee proposes to mount its antenna on or near an AM tower, as defined in § 1.30002, the FM translator or booster licensee or permittee must comply with § 1.30003 or § 1.30002.

[FR Doc. 2013–24139 Filed 11–4–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 12–69, 12–332; FCC 13–136]

Promoting Interoperability in the 700 MHz Commercial Spectrum; Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes certain steps to implement an industry solution to provide interoperable Long Term Evolution (LTE) in the Lower 700 MHz band to improve choice and quality for consumers of mobile services. The Commission revises its Part 27 rules to modify the technical requirements for the Lower 700 MHz D and E blocks to eliminate potential harmful interference while continuing to allow high value use of D and E blocks. Additionally, the Commission proposes to modify AT&T's B and C Block licenses. Finally, the Commission waives the construction requirements for A, B, and E Block licensees and extends the deadlines.

DATES: Effective December 5, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Wireless Telecommunications Bureau, (202) 418–1310, email *Jennifer.Salhus@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order of Proposed Modification (R&O and Order), WT Docket Nos. 12–69, 12–332; FCC 13–136, adopted October 25, 2013 and released October 29, 2013. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com*. Copies of the R&O and Order also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 12–69. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

I. Introduction

1. In the R&O and Order, the Commission takes certain steps to implement an industry solution to provide interoperable LTE service in the Lower 700 MHz band in an efficient and effective manner to improve choice and quality for consumers of mobile services. A number of the principal wireless providers licensed in this band, along with the Competitive Carriers Association, have developed a voluntary industry solution that would resolve the lack of interoperability in this band while allowing flexibility in responding to evolving consumer needs and dynamic and fast-paced technological developments. The amendments to its rules and modifications to licenses proposed herein will serve the public interest by enabling consumers, especially in rural areas, to enjoy the benefits of greater competition and more choices, and by encouraging efficient use of spectrum, investment, job creation, and the development of innovative mobile broadband services and equipment.

2. The steps the Commission takes here will assist consumers and the economies in rural areas, as well as small and regional businesses that operate there. Additional competition in rural areas is likely to result in lower-priced services, or plan options that are tailored to local communities. Small or regional providers serving rural areas drive economic growth in these rural areas, directly, by investing in their networks and creating jobs, and indirectly, by enabling the growth of other small businesses. But in order to promote competition—and enable small business customers of 700 MHz band licensees to operate successfully in the 21st century—these licensees need to be able to offer service choices. Interoperability of LTE service in the Lower 700 MHz band will remove an unnecessary barrier to the successful operation of businesses that can drive economic growth, promote competitive service, and create jobs in rural America, where 1.3 million people (and approximately 13% of rural road miles) still lack any mobile wireless broadband coverage and over one-third of the population still lacks coverage by more than two mobile broadband providers.

3. As described in more detail below, the Commission launched this proceeding last year to promote interoperability in the Lower 700 MHz band. It sought comment on the core issue of whether providing interoperable LTE service with the use of a unified band class (to achieve interoperability) would result in harmful interference to customers using service on the Lower 700 MHz B and C Blocks and whether, if harmful interference were likely to exist, it reasonably could be mitigated. The Commission expressed its preference for an industry solution for interoperability, but also recognized that, if the industry failed to move in a timely manner toward interoperability, additional regulatory steps might be appropriate to further the public interest. On September 10, 2013, key parties in this proceeding filed letters with the Commission indicating their support for a voluntary industry consensus agreement to resolve the lack of interoperability in the Lower 700 MHz band. In the R&O and Order, the Commission takes the following steps:

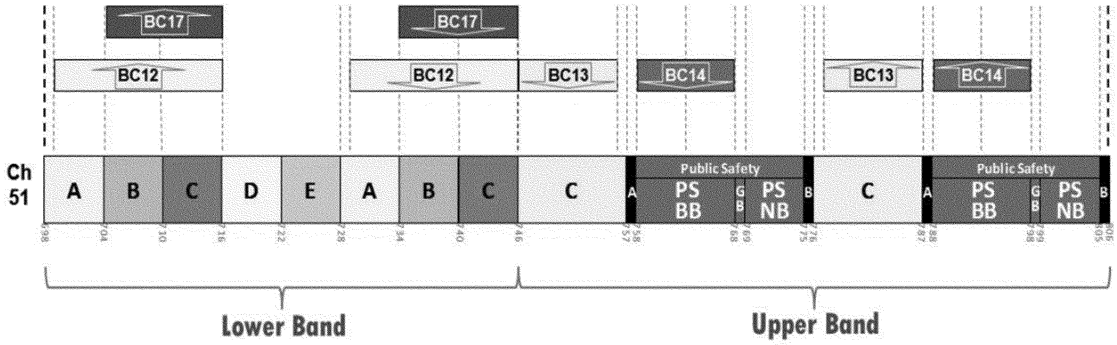
- The Commission revises its Part 27 rules to modify the technical requirements for the Lower 700 MHz D and E Blocks to eliminate potential harmful interference while continuing to allow high value uses of the D and E Blocks. The Commission establishes a process for higher power uses primarily in rural areas if the D/E Block licensee has the consent of affected 700 MHz licensees, or can show no harmful interference.
- The Commission need take no action to address claims of reverse intermodulation interference from adjacent Channel 51 operations to B and C Block operations, because the Commission concludes based on the record that harmful interference from such reverse intermodulation products is unlikely and therefore is not an impediment to implementation of the voluntary industry solution for achieving interoperability.
- Pursuant to section 316 of the Communications Act, the Commission proposes to modify AT&T's B and C Block licenses as outlined herein and in AT&T's commitment letter to effectuate the voluntary industry solution that will resolve the lack of interoperability in the Lower 700 MHz band in an effective and efficient manner.
- The Commission waives the construction requirements for E Block licensees, extending the interim and final deadlines and permitting a showing of population coverage, rather than geographic coverage.
- The Commission waives the construction requirements for A and B Block licensees, extending the interim deadline to December 13, 2016, and removing the interim deadline for certain A Block licensees adjacent to Channel 51 operations.

II. Background

4. *The 700 MHz Band.* As shown in the diagram below, the 700 MHz band (698–806 MHz) is comprised primarily of 70 megahertz of commercial spectrum and 34 megahertz of public safety spectrum. The Commission divided the band into the Lower and Upper 700 MHz bands pursuant to the Balanced Budget Act of 1997, which provided for a transition of this spectrum from broadcast to commercial and public safety wireless use and established a deadline for the auction of the Upper 700 MHz band but not for the auction of the Lower 700 MHz band. That Act also established specific criteria for the mandatory transition to DTV that freed up spectrum for commercial and public safety use.

5. The Lower 700 MHz band spectrum (698–746 MHz), which is the subject of this Report and Order, consists of 48 megahertz of commercial spectrum—three blocks of 12 megahertz each of paired spectrum (Lower A, B, and C Blocks), and two blocks of 6 megahertz each of unpaired spectrum (Lower D and E Blocks). The Lower 700 MHz A Block spectrum is adjacent to Channel 51 (692–698 MHz), which has been allocated for TV broadcast operations at power levels of up to 1000 kW. The Lower 700 MHz A Block is also adjacent to the unpaired Lower 700 MHz E Block, where licensees may operate at power levels up to 50 kW. The Commission first assigned licenses for the Lower 700 MHz band when it auctioned all the licenses in the Lower 700 MHz C and D Blocks in Auction 44 in 2002. Licenses unsold in Auction 44 were subsequently sold in 2003 and 2005 in Auctions 49 and 60.

700 MHz Band and 3GPP Band Classes



6. In 2005, the Digital Transition and Public Safety Act (DTV Act) established a nationwide deadline for the DTV transition that would make 700 MHz spectrum available for commercial and public safety use and mandated that the Commission commence an auction for all the remaining recovered spectrum. Following the enactment of the DTV Act, the Commission auctioned licenses in the Lower 700 MHz A, B, and E Blocks in 2008 as part of Auction 73, which garnered over $19 billion in revenues. The relatively few unsold Lower A and B Block licenses were later sold in Auction 92 in 2011.

7. Although U.S. service providers have, in the past, deployed different mobile wireless network technologies, today the evolution of these technologies is converging on LTE. LTE increases the capacity and speed of wireless networks by redesigning and simplifying the network architecture to transition from the existing combination of circuit and packet switching to an all-IP architecture system. All of the major mobile wireless providers (including those with both GSM and CDMA legacy networks) now offer or plan to deploy LTE. By September 2012, for example, AT&T announced that it had LTE coverage in 63 markets, and had plans to deploy LTE to 80 percent of the U.S. population by the end of 2013.

8. Industry standards for LTE are developed by 3GPP, an international partnership of industry-based telecommunications standards bodies that, among other things, establishes standards for different LTE band classes. A specific band class standard allows LTE operations only in its specified range of frequencies, along with other technical specifications and signaling protocol. In November 2007, prior to Auction 73, the Band Class 12 LTE standard was introduced, consistent with its precedent of establishing a unified band class for each spectrum band.

9. After the conclusion in March 2008 of Auction 73, Motorola initiated steps to have 3GPP establish a new industry standard (later designated as Band Class 17) that would be limited to the Lower 700 MHz B and C Blocks. In proposing Band Class 17, Motorola cited the need to address concerns about high power broadcast transmissions in Channel 51 and the Lower 700 MHz D and E Blocks. As envisioned and ultimately adopted, the Band Class 17 standard allows LTE operations in only the Lower 700 MHz B and C blocks using a specific signaling protocol that would filter out all other frequencies. Although Band Class 17 operates on two of the three blocks common to Band Class 12, Band Class 17 devices use more narrow filters, which have the effect of permitting a smaller range of frequencies to pass through the filter. Such filters provide more attenuation of signals from Lower 700 MHz E Block frequencies, and from Channel 51 television stations, whose frequency band (as depicted above) lies immediately below the Lower 700 MHz A Block. This attenuation is accomplished by using the two paired A Block frequencies as *de facto* guard bands. By contrast, Band Class 12 devices use A Block frequencies for transmissions as well as the B and C Block frequencies. In addition, Band Class 12 and Band Class 17 signaling protocols are not compatible. Therefore, services provided by stations using these two band classes are not interoperable in the Lower 700 MHz band. 3GPP finalized the initial standards and specifications for Band Class 17 five months after its introduction in September 2008.

10. The creation of two non-interoperable band classes has had numerous effects. For example, customers are unable to switch between a licensee deploying its service using Band Class 17 and a licensee that provides its service using Band Class 12 without purchasing a new device (even when the two operators use the same 2G and 3G technologies and bands), and Band Class 12 devices and Band Class 17 devices cannot roam on each other's networks. In September 2009, four Lower 700 MHz A Block licensees filed a petition for rulemaking asking the Commission to impose for this spectrum block an interoperability mandate similar to that imposed in 1981 for the cellular band. In the *Interoperability NPRM,* 77 FR 19575, April 2, 2012, the Commission discussed the importance of interoperability in furthering the public interest, and sought comment on whether taking action to ensure reintegration of the three paired Lower 700 MHz blocks into a single band class would cause harmful interference to LTE operations on the Lower 700 MHz B and C Block licensees if Band Class 12 devices were used. The Commission noted that entities involved in the creation of Band Class 17 during 3GPP proceedings had claimed that it was necessary to create a separate band class for Lower 700 MHz B and C Block licenses to avoid reverse intermodulation interference issues from DTV stations operating on Channel 51 and blocking from high power operations in the E Block, and sought comment, as described above, on whether reintegration of the band pursuant to an interoperability mandate would result in harmful interference. *Interoperability NPRM.* The Commission defines harmful interference in accordance with established Commission rules. *See* 47 CFR 15.3(m). As we discuss below in Sec.III.B.1. with respect to DTV transmissions from Channel 51, an issue concerning reverse intermodulation interference can arise where there is a mix or interaction of Channel 51 transmissions and transmissions from a

wireless device in Lower 700 MHz B and C Blocks. The issue is whether, and the degree to which, the resulting third transmission, or intermodulation product, can occur on frequencies used by the wireless device to receive transmissions. The risk of reverse intermodulation interference to Lower 700 MHz B and C Block licensees because of the existence of Channel 51 operations is separate and distinct from the limitations placed on Lower 700 MHz A Block licensees to protect Channel 51 operations from adjacent channel interference from Lower 700 MHz A Block operations. *See* 47 CFR 27.60(a)(2).

11. On September 10, 2013, key stakeholders involved in this proceeding filed letters with the Commission indicating their support for a voluntary industry consensus agreement to resolve the lack of interoperability in the Lower 700 MHz band. In its letter, AT&T outlines its commitments to help achieve Lower 700 MHz interoperability, including its commitment to begin rolling out interoperable devices within 24 months. DISH similarly outlines its commitments to address interference concerns regarding high powered operations in the E Block spectrum. A coalition of Lower 700 MHz A Block licensees also filed a letter indicating their support for the commitments contained in AT&T's letter as a means to ensure restoration of interoperability in the Lower 700 MHz band.

12. *Channel 51 Broadcast Operations.* As set out earlier in the 700 MHz band plan, Channel 51 broadcast stations are adjacent to the lower portion of the Lower 700 MHz band. Channel 51 stations give rise to one of the two alleged interference issues potentially affecting interoperability—the possibility of reverse intermodulation interference resulting from the interplay of Channel 51 and Lower 700 MHz B and C Block signals. Separate from this issue, and not relevant to the interoperability of service within the Lower 700 MHz band, are questions of adjacent channel interference between Channel 51 and Lower 700 MHz A Block signals. Because of the potential for such adjacent channel interference, Commission rules establish exclusion zones in which Lower A Block operations are prohibited, which are designed to protect Channel 51 stations from possible interference. There are currently 27 full-power Channel 51 broadcast stations, and 6 Class A low-power television operations on Channel 51 in the U.S., including Puerto Rico. Nearly 190 million American consumers live *outside* these exclusion zones, including almost 50 million of the 60 million American consumers living in rural areas. More than 3.2 million square miles, or more than 90 percent of the land area in the U.S. is located outside the exclusion zones, including 2.8 million square miles in rural areas.

III. Discussion

13. As noted above, on September 10, 2013, parties in this proceeding filed letters with the Commission indicating that they have reached agreement on a voluntary industry solution to resolve the lack of interoperability in the Lower 700 MHz band. Here the Commission takes steps to implement this voluntary industry solution, the substantive terms of which the Commission finds to be consistent with the public interest, convenience, and necessity as well as the record in this proceeding for the reasons set forth below. First, and in accordance with the industry consensus, the Commission addresses interference concerns that have been raised as obstacles to the voluntary adoption of interoperability in the Lower 700 MHz band. The Commission finds that the current technical rules governing the D and E Blocks would likely lead to harmful interference to Lower 700 MHz B and C Block licensees and therefore do constitute a barrier to interoperability. The Commission therefore modifies those rules to eliminate that barrier in a manner consistent with the industry solution. In addition, after review of the extensive record in this proceeding, and based on its technical expertise and predictive judgment, the Commission finds that any harmful interference to Lower 700 MHz mobile devices operating on the Lower 700 MHz B and C Blocks as a result of Channel 51 broadcast operations is unlikely. Having addressed the potential interference issues, the Commission proposes to modify AT&T's B and C Block licenses as outlined herein and in AT&T's commitment letter to effectuate the voluntary industry solution and resolve the lack of interoperability in the Lower 700 MHz band in an effective and efficient manner. Implementing the substantive terms of the industry solution to establish a clear path to interoperability in the Lower 700 MHz spectrum is consistent with the Commission's longstanding interest in promoting the interoperability of wireless mobile services (an objective that has been realized for cellular, PCS, AWS, and public safety broadband, and other services) and furthers important public interests, including promoting the widest possible deployment of mobile broadband services, ensuring the most efficient use of spectrum, promoting competition and enhancing consumer choice of wireless services.

14. Finally, in light of its foregoing actions, the Commission modifies the construction requirements for E Block licensees, extending the interim and final deadlines and license terms and permitting licensees to meet a population-based coverage requirement as an alternative to a geographic-based requirement. The Commission also modifies the construction requirements for A and B Block licensees, extending the interim construction benchmark deadline to December 13, 2016 and removing the interim deadline for certain A Block licensees adjacent to Channel 51 operations.

A. Technical Rules for D and E Blocks

15. *Background.* Under § 27.50(c)(7) of the Commission's rules, a licensee authorized to operate in the 710–716, 716–722, or 740–746 MHz bands, or in any unpaired spectrum blocks within the 698–746 MHz band may operate a fixed or base station at an Effective Radiated Power (ERP) of up to 50 kW within its authorized bandwidth. Further, the antenna height for such stations is limited only to the extent required to satisfy the power flux density requirements of § 27.55(b) of the rules, which provide that the power transmitted from a fixed or base station may not exceed 3000 microwatts per square meter on the ground at any distance within 1 km of the stations. By contrast, other fixed or base stations in the Lower 700 MHz band transmitting a signal with an emission bandwidth greater than 1 megahertz, including stations authorized in the Lower 700 MHz A and B Block, are restricted to an ERP of 1,000 to 2,000 watts/MHz and an antenna height of 305 m height above average terrain (HAAT).

16. In 2011, the Commission recognized that high-powered operations in the D and E Blocks could be a source of harmful interference, and conditioned the approval of AT&T's acquisition of Qualcomm's Lower 700 MHz D and E Block spectrum on certain technical requirements designed to ensure that AT&T's operations on the Lower 700 MHz spectrum would not limit the potential of third parties to fully utilize other Lower 700 MHz spectrum. The *AT&T-Qualcomm Order* also prohibited AT&T from using the Qualcomm spectrum for uplink transmissions and imposed a coordination and mitigation condition with respect to possible interference caused by AT&T's use of the Lower 700 MHz D and E Blocks for supplemental downlink to the uplink operations of

other licensees operating in the Lower 700 MHz A, B, and C Blocks.

17. The 3GPP has adopted certain technical specifications for user equipment operating in different 700 MHz bands. 3GPP's specifications for output power and the out-of-band emission (OOBE) specifications for LTE equipment are the same for all commercial paired frequencies in the Lower 700 MHz band. The 3GPP specifications differ, however, with respect to receiver blocking, which is the required ability of a receiver to tolerate a much stronger (Lower 700 MHz E Block) signal spectrally located near the desired signal. The 3GPP-specified requirements for receiver blocking are the same for Band Class 13 and Band Class 14 equipment, but Band Class 12 and Band Class 17 have distinct blocking requirements, due to differences in each band's relative proximity to neighboring high-powered operations in the Lower 700 MHz D and E Blocks.

18. In the *Interoperability NPRM,* the Commission sought comment on whether potential interference from the 700 MHz Lower E Block might be preventing the voluntary adoption of Band Class 12 by Lower B and C block licensees. The *Interoperability NPRM* sought comment on whether there are any measures the Commission could take to address such interference concerns, including whether they could be adequately addressed by adopting technical conditions set forth in the *AT&T-Qualcomm Order.* The Commission sought comment on whether there were changes the Commission could adopt to its rules that would address concerns that Lower 700 MHz B and C Block licensees might experience harmful interference from Lower 700 MHz D and E Block operations and encourage these licensees to voluntarily adopt interoperable devices. The Commission also sought comment on how such modifications would affect the operations and plans of Lower E Block licensees, other than AT&T.

19. On September 10, 2013, AT&T and DISH made ex parte filings as part of the voluntary industry solution in which they set out certain steps to address potential interference concerns from the Lower 700 MHz E Block to the Lower 700 MHz B and C Blocks. DISH states that it shares the Commission's goals of promoting efficient spectrum use of the Lower 700 MHz band and, as part of an industry consensus on interoperability, it is willing to consent to a reduction in power. Specifically, DISH states that, to support the Commission's efforts and objectives, it will consent to a reduction of the ERP of base stations for its Lower 700 MHz E Block licenses to 1,000 watts/MHz in urban areas and 2,000 watts/MHz in rural areas. DISH further states that it currently plans to deploy an LTE network similar to what Lower 700 MHz A, B, C, and D Block operators have deployed today, and to similarly enhance the network as the LTE technology evolves, which would make the above power levels consistent within the band. Finally, DISH asserts that it should retain a limited right to operate at existing ERP limits pursuant to operator-to-operator agreements with other affected licensees or upon a demonstration to the Commission of no harmful interference to other relevant Lower 700 MHz licensees. According to DISH [t]he need to reserve a limited opportunity for high-power operations is particularly important for rural America and the deployment of high-power services to underserved communities. DISH notes that [t]his rural-focused flexibility—dependent upon actual licensee agreement or further FCC action—will provide DISH with the opportunity to better serve underserved communities without adversely affecting the Commission's objective to better utilize the Lower 700 MHz band. In its filing, AT&T states that its commitments to Lower 700 MHz interoperability are premised on requirements that all Lower 700 MHz E Block licensees transmitting a signal with an emission bandwidth greater than 1 megahertz are restricted to an ERP of 1,000 watts to 2,000 watts per megahertz and an antenna height of 305 m HAAT.

20. *Discussion.* Based on the record, the Commission finds that, under the current rules, there is a significant threat of harmful interference from high power transmissions in the Lower 700 MHz D and E Blocks to Band Class 12 devices operating on the Lower 700 MHz B and C Blocks that could jeopardize the viability of interoperability in the band. Consistent with the record in this proceeding and the *AT&T-Qualcomm Order,* the Commission revises the technical rules applicable to the Lower 700 MHz D and E Blocks by reducing the maximum permissible power levels and antenna heights on these blocks. The Commission also modifies its rules to limit all operations in the Lower 700 MHz D and E Blocks to downlink only. The Commission provides that Lower 700 MHz D and E Block licensees may operate particular sites at power levels higher than permitted under the revised rules under certain specified conditions. The Commission finds these changes to be in the public interest because they eliminate likely harmful interference, thereby promoting interoperable LTE operations in the Lower 700 MHz band. Indeed, without these measures, the public would not be able to realize the substantial benefits of mobile broadband deployment and interoperability in the Lower 700 MHz band. The technical changes the Commission adopts today will continue to enable the six megahertz of unpaired Lower 700 MHz E Block spectrum to be put to commercial use while facilitating effective and efficient use of 36 megahertz of the Lower 700 MHz A, B, and C Blocks for mobile broadband services. Dish's current deployment plans and its agreement to these technical rule changes provide further support for such changes.

21. Specifically, the Commission revises its rules to provide that the Lower 700 MHz D and E Block base station transmitting a signal with an emission bandwidth of 1 MHz or less must not exceed 1 kW ERP in non-rural areas or 2 kW ERP in rural areas. In addition, Lower 700 MHz D and E Block base station transmitting a signal with an emission bandwidth greater than 1 MHz must not exceed 1 kW ERP per megahertz in non-rural areas or 2 kW ERP per megahertz in rural areas. Lower 700 MHz D and E Block licensees operating at these maximum permissible ERP are limited to an antenna height of 305 m HAAT. Except pursuant to consent or waiver as described below, the specific revisions to the Commission's rules adopted in this Report and Order that modify the applicable power limits and the antenna height restrictions applicable to Lower 700 MHz D and E Block licenses are consistent with the current rules applicable to the Lower 700 MHz A and B Block licenses and with conditions adopted in the *AT&T-Qualcomm Order* that were placed on all the Lower 700 MHz D Block licenses and those E Block licenses that are held by AT&T. See also 47 CFR 27.50 (Tables 1, 2, 3, and 4). For the reasons set forth in this Report and Order, the Commission's revised rules will apply to all D and E Block licensees, including AT&T, and operate to supersede the conditions adopted in the *AT&T Qualcomm Order* applicable to AT&T's D and E Block operations. The revised rules will supersede the conditions adopted in the *AT&T Qualcomm Order* only after they become final and unappealable. The Commission also limits operations in the Lower 700 MHz D and E Blocks to downlink only. Finally, the Commission finds that it would serve the public

interest to permit a Lower 700 MHz D or E Block licensee to operate particular sites at a higher ERP level up to 50 kW in conjunction with the current power flux density (PFD) limit if the Lower 700 MHz D or E Block licensee enters into operator-to-operator agreements with other affected licensees or, absent agreements with all affected licensees, pursuant to a waiver upon a demonstration to the Commission of no harmful interference to other relevant Lower 700 MHz licensees.

22. As discussed in detail below, the Commission finds that the current technical rules, which permit a 50 kW ERP level in conjunction with a PFD limit, are likely not sufficient to prevent harmful blocking interference into neighboring operations in the Lower 700 MHz bands providing interoperable service. More specifically, based on the record in this proceeding, the Commission concludes first that low-powered two-way mobile broadband LTE service provided on the Lower 700 MHz B and C Blocks using Band Class 12 devices would likely be subject to harmful blocking interference from high-powered Lower 700 MHz D and E Block operations. In evaluating whether a Band Class 12 device is being subjected to harmful interference based on the test data submitted in the record, the Commission assumes 3 dB desense (Receiver desense or desensitization is the amount of receiver sensitivity degradation due to interference relative to the unencumbered receiver sensitivity (the lowest received signal power that a noise limited receiver needs to be functional), measured in dB. For example, a 3 dB desense occurs when the interference power is equal to the receiver's system noise power) as the appropriate threshold, along with considerations of the probability and potential locations of such interference events. In other words, a Band Class 12 device should only be required to receive successfully in the presence of blocking interference, a desired signal 3 dB above the receiver's reference sensitivity (receiver blocking requirements address a receiver's ability to receive at least 95% of the reference throughput at the reference sensitivity, at its assigned channel in the presence of an unwanted interfering signal falling into the device receive band or into the first adjacent 15 megahertz. See Table 7.6.1.1–2, Section 7.6.1 of 3GPP TS 36.104 V9.9.0 (2011–09)). The Commission notes that this approach is consistent with the Commission's analysis in the H Block proceeding. Using 3 dB desense, and based on the test data in the record, the Commission finds that there are likely to be significant areas where a Band Class 12 device would be subjected to harmful blocking interference without a change to its current technical rules. In particular, the Commission finds that the V–COMM Study shows the 3 dB desense of Band Class 12 devices using the Lower 700 MHz B and C Block spectrum occurs when the Lower 700 MHz E Block received signal strength is about -26 dBm. Therefore the Commission concludes that interference to Band Class 12 devices is likely to occur when the interfering signal strengths reach those levels. Moreover, the V–COMM and Hyslop-Kolodzy test data show that received signals of –26 dBm and higher from E Block transmissions are not uncommon. Indeed, the Hyslop-Kolodzy Report shows areas on drive tests where signals were stronger than –16 dBm, which is significantly worse than the –26 dBm threshold. Based on these data and on its technical expertise and predictive judgment, the Commission finds that the current technical rules are not sufficient to protect against harmful interference, because harmful blocking interference is likely to occur in a significant number of instances.

23. The Commission next finds that mitigation techniques for blocking interference from high-powered Lower 700 MHz E Block transmitters are not practical to overcome potentially many instances of harmful interference from the Lower 700 MHz E Block transmitters, would be costly and difficult and could address only some instances of potential harmful interference. If Lower 700 MHz E Block stations were to commence high-powered operations, Lower 700 MHz B and C Block licensees using Band Class 12 devices may need to make many RF network design and optimization modifications to mitigate the high-power E Block interference due to a potentially large number of high-power 700 MHz E Block transmitters, including the possible deployment of sites that otherwise would not be needed. In addition, mitigating interference from high-powered Lower 700 MHz E Block transmitters by co-locating with lower-powered LTE transmitters does not appear to be an effective option in many cases, given that Lower 700 MHz licensees have already either planned or deployed their LTE networks in many cases and that DISH Network has not deployed the vast majority of its Lower 700 MHz E Block transmitters yet. As a practical matter, co-location could be cost effective only with respect to Lower 700 MHz E Block transmitters that exist at the time the LTE network is being designed and built. While co-location on subsequently deployed Lower 700 MHz E Block transmitters is possible, newly co-located LTE transmitters could require costly re-engineering for the rest of the LTE network. As a result, the Commission concludes that modification of the maximum permissible ERP level for the Lower 700 MHz D and E Blocks is needed to lower the probability and decrease the potential instances and locations in which the receive signal strengths of Lower 700 MHz D and E Block licensees could exceed -26 dBm.

24. Similar to other Lower 700 MHz licensees, the Commission further revises its rules to provide that the Lower 700 MHz D and E Block licensees operating at the maximum permissible ERP are limited to an antenna height of 305 m HAAT. The Commission notes that power levels and antenna heights are closely linked: operating less than the maximum permissible ERP would allow a licensee to have a higher HAAT. Fixed or base stations transmitting a signal with an emission bandwidth of 1 MHz or less may operate at antenna heights greater than 305 m HAAT if ERP levels are reduced below 1kW for non-rural areas in accordance with Table 1, or below 2kW ERP for rural areas in accordance with Table 2 of the Commission's rules, § 27.50. Fixed or base stations transmitting a signal with an emission bandwidth greater than 1 MHz may operate at antenna heights greater than 305 m HAAT if ERP levels are reduced below 1kW per megahertz for non-rural areas in accordance with Table 3, or below 2kW per megahertz ERP for rural areas in accordance with Table 4 of the Commission's rules, § 27.50.

25. Finally, consistent with DISH's current plans to deploy an LTE network similar to that deployed by Lower 700 MHz A, B, C, and D Block operators, the Commission finds it in the public interest to modify its rules to impose certain restrictions on all D and E Block operations that are similar to conditions imposed upon AT&T in the *AT&T-Qualcomm Order* in connection with AT&T's use of its Lower 700 MHz D and E Block licenses. In particular, the Commission revises its rules to provide that Lower 700 MHz D and E Block licensees may not use their licenses for uplink transmission and must instead use this spectrum only for downlink transmissions. This change serves the public interest by preventing harmful interference and facilitating interoperability. Because the surrounding blocks are used for

downlink operations, uplink or TDD operations in the E Block will cause harmful interference to mobile receivers in the adjacent bands unless very strict power limits, stringent out of band emission limits, and guard bands are employed on all three blocks.

26. These rule changes reflect the significant developments in the Lower 700 MHz band since the original adoption of the technical rules in 2002. In 2002, the Commission recognized that high power transmissions could cause interference to adjacent channels, especially those that operate at low power levels, but found that the risk of harmful interference from power levels up to 50 kW could be mitigated by limiting permissible power flux density levels for base stations operating in excess of 1kW ERP. At that time, however, the Commission's expectation was that operations at lower power would not be prevalent, and the Commission permitted power levels up to 50 kW in all of the Lower 700 MHz Blocks. Operation at similar power levels would result in signal desired to undesired ratios that would minimize the likelihood of harmful interference. The Lower 700 MHz band was then the home to broadcasters in the midst of a technically complex transition to digital television. In particular, when the Commission adopted these rules in the *Lower 700 MHz Report and Order,* 67 FR 5491, Feb. 6, 2002, it observed that the Lower 700 MHz band will remain principally a television band until the end of the digital transition pursuant to the requirements of the Balanced Budget Act of 1997. In light of the uncertainty regarding the availability and future use of this band, and the expectation that much of the band would be occupied by full-power broadcast stations for an indefinite period of time, the Commission adopted a flexible use approach to allow for fixed and mobile services, along with broadcast and other broadband applications that could include two-way interactive, cellular, and mobile television broadcasting services.

27. Since 2002, significant developments in the Lower 700 MHz band include the active deployment of mobile broadband services in the Lower 700 MHz Band and the fact that it is no longer a TV band. After the Commission adopted the *Lower 700 MHz Report and Order,* Congress passed the Digital Television Transition and Public Safety Act of 2005 (DTV Act), which accelerated the DTV transition by providing a date certain, February 17, 2009, for the end of the transition. The Commission subsequently revised its rules in 2007 pursuant to the DTV Act prior to Auction 73, which included the Lower A, B, and E Blocks. There also have been significant developments since 2007, when, as DISH notes, the Commission declined to adjust the 50 kW power limit applicable to the Lower D and E Blocks. Now six years later, by contrast, the demand for and use of mobile broadband services have grown significantly and continue to increase, and Lower 700 MHz licensees are deploying LTE networks to respond to this demand in spectrum adjacent to the Lower E Block, and there is no longer any high-power broadcast service being provided to consumers on this spectrum. Moreover, the record of this proceeding includes detailed studies of interference effects on the mobile devices now in use in connection with the lower power services that have displaced higher power broadcast operations in the band, which lower power services are more vulnerable to blocking interference from high power E Block transmissions. The Commission has thus changed its position on this matter in light of these intervening developments and the updated information in this record.

28. As indicated above, the Commission also finds that these rule changes are fully consistent with the current plans by the two major licensees of these Blocks and with the voluntary industry solution proposed by stakeholders. Indeed, the Commission finds that these changes to its technical rules also will facilitate the anticipated uses of the Lower 700 MHz D and E Blocks. As stated in its recent *ex parte* filing, DISH Network plans to use its unpaired 700 MHz E Block licenses to deploy an LTE network similar to what Lower 700 MHz A, B, C, and D Block operators have deployed today, and to similarly enhance the networks as the LTE technology evolves. AT&T has indicated that its current plans are to use the unpaired 700 MHz Lower D and E Block licenses it acquired from Qualcomm in December 2011 for LTE video services while also looking at pairing this spectrum with other bands, as a supplemental downlink for mobile LTE. These facts strongly support its conclusion that these modifications will further the public interest.

29. In sum, modifying the power limits and the antenna height restrictions for the Lower 700 MHz D and E Blocks, along with limiting these licenses to downlink transmissions, is necessary to enable Lower 700 MHz interoperability by resolving concerns about interference from high-powered transmissions and enable provisioning of mobile broadband LTE services in the adjacent bands. These changes also will facilitate the plans of the Lower D and E Block licensees to utilize this spectrum to provide commercial services to American consumers.

30. The Commission also finds that, in addition to ensuring interoperability and facilitating use of the D and E Blocks, these rule changes also will facilitate Lower 700 MHz A Block operations because LTE service provided on the A Block would otherwise likely be subject to harmful interference from high-power operations in the Lower 700 MHz E Block. In particular, mobile devices operating near a Lower E Block transmitter but far from their serving LTE base stations face a substantial risk of receiving harmful interference from E Block transmitters. The potential for this interference would exist because of vastly different radio propagation characteristics between the high-powered Lower 700 MHz E Block and lower powered A Block LTE systems, and such interference would result in significant degradation of service to A Block operations in areas close to high-powered E Block transmitters. Accordingly, the harmonized technical rules will facilitate provisioning of mobile broadband LTE services to consumers in all of the paired Lower 700 MHz bands without significant service degradation.

31. The Commission agrees as well with DISH's proposal in its recent *ex parte* filing that it also would serve the public interest to permit particular Lower 700 MHz D or E Block stations to operate under the existing ERP level of up to 50 kW, in conjunction with the existing power flux density (PFD) limit, so long as the licensee obtains consent of all affected licensees. In taking this action, the Commission finds that this flexibility will provide D and E Block licensees with the opportunity to better serve rural and underserved communities without adversely affecting the Commission's objective to more effectively utilize the Lower 700 MHz band. Specifically, the Commission amends § 27.50 to provide that lower 700 MHz D and E Block licensees may operate stations at existing power limits if they are able to obtain the written concurrence of all potentially affected licensees. For purposes of this rule, the Commission finds that potentially affected licensees are all A, B, C, D and E Block licensees licensed within 120 km of the proposed higher powered site. This provision is consistent with the Commission's rule requiring coordination when licensees operate at higher power levels in rural areas. 47 CFR 27.50(c)(5). Prior to operation, Lower 700 MHz D and E

Block licensees must obtain written concurrence from each potentially affected licensee and file a copy of each agreement with the Wireless Telecommunications Bureau via FCC Form 601. The Commission notes that there are fewer than 10 licensees that will file a copy of the agreement via FCC Form 601, and thus its action here does not trigger the Paperwork Reduction Act, 5 CFR 1320.3(c)(4). If a licensee is unable to obtain written concurrence from one or more affected licensees, it may seek a waiver of this rule with respect to a particular transmitter. The waiver request must meet the waiver standard articulated in § 1.925 of the Commission's rules. In assessing whether a waiver grant is warranted, the Commission will determine whether the licensee has made reasonable efforts to obtain the written concurrence of all affected licensees and has shown that operation at higher power from the particular transmitter facility will not cause harmful interference to affected licensees' existing operations. The Commission's determination will take into account a number of factors, including the following: the location of the transmitter, the technology, and the relevant technical parameters of the transmitter facility; the location(s) and technical characteristics of the potentially affected licensees' stations; and any engineering studies demonstrating no harmful interference. The nature of the potential harmful interference suggests that it likely will be more difficult to demonstrate no harmful interference to affected licensees in urban areas than in rural areas. Finally, in order to protect future operations of potentially affected licensees, any waiver granted will be conditioned on causing no harmful interference to future deployments by affected licensees (or obtaining their written concurrence).

32. Consistent with the *AT&T Qualcomm Order,* the Commission also requires that the Lower 700 MHz D and E Block licensees take steps to mitigate the potential for harmful interference from their downlink operations to uplink operations in the A, B, and C Blocks. In particular, the Commission requires D and E Block licensees to take the following measures: (1) Coordinate with A, B, or C Block licensees to mitigate the potential for harmful interference; (2) mitigate interference to A, B, or C Block operations within 30 days after receiving written notice from the affected A, B, or C Block licensees; and (3) ensure that D or E Block transmissions are filtered at least to the extent that the D or E Block transmissions are filtered in markets where the D or E Block licensee holds an A, B, or C Block license, as applicable. Coordination and mitigation steps should include, but are not limited to, the following measures: If a Lower A, B, or C Block licensee deploys a network after the D or E Block deploys a network on its Lower 700 MHz D or E Block spectrum in the same geographic market, the D or E Block licensee will work with the A, B, or C Block licensee to identify sites that will require additional filtering, and will help the A, B, or C Block licensee to identify proper filters. The D or E Block licensee is also required to permit these licensees to collocate on the towers it owns at prevailing market rates. On the other hand, if a Lower A, B, or C Block licensee deploys a network before a D or E Block licensee deploys a network in the same geographic market, the D or E Block licensee will work with the A, B, or C Block licensee to identify sites that will need additional filtering and will purchase and pay for installation of required filters on such sites. For purposes of this condition, deployment of a network shall be the date upon which the network is able to support a commercial mobile voice or data service.

33. The Commission finds that the Commission has authority to adjust the technical requirements for the Lower 700 MHz D and E Blocks as outlined above. Title III of the Act provides the Commission with broad authority to manage spectrum, including allocating and assigning radio spectrum for spectrum based services and modifying spectrum usage conditions in the public interest. The Commission is charged with maintaining control over all the channels of radio transmission in the United States. Section 301 states that [i]t is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. The issuance of a Commission license does not convey any ownership or property interests in the spectrum and does not provide the licensee with any rights that can override the Commission's proper exercise of its regulatory power over the spectrum. As the D.C. Circuit held well before the E Block auction here, Congress specifically applied to licenses acquired by auction this long tradition of Commission authority to change rules governing already-issued licenses.

34. The Commission therefore takes its actions here to revise the technical service rules applicable to the D and E Blocks pursuant to § 303(b) and 303(f) of the Act. Section 316 of the Act grants the Commission broad authority to modify existing licenses if it determines that such action will promote the public interest, convenience, and necessity. The Commission does not disregard the importance of stability in its rules, but the substantial record evidence now compiled in this proceeding concerning both the likely harmful interference from higher power D and E Block operations to the services actually now deployed in the B and C Blocks and the public interest benefits of securing interoperability outweighs this concern. As the demand for mobile broadband continues to grow, it is critical that there is nationwide mobile broadband coverage, including service in rural and underserved areas, competition within the mobile wireless broadband industry that provides consumers (particularly in these isolated areas) with greater selection from among different service offerings and pricing plans, and choice for consumers so that they can more readily change providers in order to avail themselves of competitive alternatives. Revising the technical requirements for Lower 700 MHz D and E Block licenses is a critical part of allowing interoperability and necessary to eliminate the potential for harmful interference to other 700 MHz bands. These changes are thus strongly in the public interest and authorized by Title III.

B. Channel 51

1. Assessment of Likelihood of Reverse Intermodulation Interference

35. *Background.* Channel 51 (692–698 MHz), which has been allocated for TV broadcast operations at power levels up to 1000 kW, lies just below the Lower 700 MHz Band. One of the interference issues raised by some as a possible technical obstacle to interoperability in the Lower 700 MHz band is reverse intermodulation interference from DTV Channel 51 broadcast transmissions to the operations of wireless providers in the Lower 700 MHz B and C Blocks. The issue of reverse intermodulation interference could arise when the Channel 51 signals interact, or mix, with transmissions from a wireless device to create a third transmission, or intermodulation product, that falls on a frequency used by the wireless device for receiving operation.

36. In the *Interoperability NPRM,* the Commission requested that interested parties submit measurements and quantitative analyses regarding the interference risk from adjacent Channel 51 transmissions for Band Class 12 devices operating in the Lower B and C Blocks, asked how the Commission could encourage voluntary industry efforts to find interference solutions, and requested that commenters quantify the costs of implementing any proposed solutions to interference issues.

37. The record includes studies on reverse intermodulation interference to Band Class 12 devices on Lower 700 MHz Blocks B and C from Channel 51 operations. Studies were submitted by a number of Lower 700 MHz A Block licensees (consisting of the V–COMM Study and the Hyslop-Kolodzy Report), to demonstrate that any such interference is unlikely, and if it does occur there are reasonable steps an operator can take to mitigate it. AT&T and Qualcomm filed studies that argue to the contrary (consisting of AT&T submitted studies from Reed and Tripathi, PCTEST, and 7Layers, and Qualcomm's own study. In its recent commitment letter, AT&T states that high power broadcasts currently permitted in Channel 51 and in the Lower 700 MHz E Block create the potential for significant interference problems for LTE deployments.

38. *Discussion.* Based on the extensive record in this proceeding and on its technical and predictive judgment, the Commission concludes that harmful interference to Lower 700 MHz mobile devices operating on the Lower 700 MHz B and C Blocks as a result of Channel 51 broadcast operations is unlikely for a number of reasons. Moreover, the Commission finds that providers can undertake reasonable steps to mitigate the impacts of any interference that might occur from Channel 51 transmissions to LTE Band Class 12 devices. In addition, any issue is likely to be time-limited, as the number of full-power Channel 51 stations decreases over time. The Commission notes as well that, even though AT&T identifies this issue in its September 10 letter, the proposed conditions in its letter and attachment, upon which its commitment of interoperability is based, address only potential E Block interference, and do not include any provisions relating to potential reverse intermodulation interference from Channel 51 broadcast operations.

39. The Commission finds first that reverse intermodulation interference will occur only in the unlikely event of a coincidence of a number of different factors. For Channel 51 broadcast transmission to cause reverse intermodulation interference, all of the following would have to occur at the same time: the Channel 51 broadcast transmission reaches a very strong signal strength threshold received at the LTE mobile device, the LTE device is transmitting and receiving in certain specific frequencies within that carrier, and the mobile device is transmitting at maximum power. The Commission also notes there is a stable set of no more than 27 full-power, licensed broadcast facilities in the U.S., including Puerto Rico, and over time the number of full-power Channel 51 stations will likely decrease principally as a result of the incentive auction proceeding.

40. The Commission's conclusions rely as well on its evaluation of the evidence in the record. The Commission finds that the tests and analyses of the proponents of an interoperability rule are more convincing than the tests and analyses submitted by opponents because, *inter alia,* the proponents used more reasonable testing parameters such as the placement of the LTE carrier frequency and the number of resource blocks. The proponents also tested more devices under more possible interference scenarios which give a more comprehensive picture of the overall device performance, in both lab and field tests. Qualcomm used a commercially-available power amplifier that transmitted at 1930 MHz, which is not as representative of operating in the 700 MHz band as the 700 MHz devices that were used in the other tests.

41. The evidence in the record also shows that the high Channel 51 signal levels that raise the risk of interference occur rarely. For instance, V–COMM's testing shows that the level of a Channel 51 signal strength threshold that would likely cause interference is –13 dBm with 1 dB desense. According to the record, only 8 of 26 Channel 51 full-power, licensed broadcast facilities in the continental U.S. could, using the conservative line-of-sight (LOS) propagation model, theoretically exceed the signal strength threshold of –13 dBm, and these areas are limited to 450 meters or less from the Channel 51 broadcast tower. In addition, V–COMM's drive testing results near actual Channel 51 DTV transmitters show that very high Channel 51 signal strengths, e.g. above –13 dBm, are mostly confined to locations near Channel 51 transmitters. However, to be consistent with the Commission's analysis in the H Block proceeding, the Commission finds that using a 3dB desensitization level is more appropriate in this case. According to lab tests in the record, this requires a Channel 51 signal strength of –9 dBm, or 4 dB stronger than the level used by V–COMM. The drive tests in the record demonstrate that a signal level of –9 dBm is very rare in the field.

42. Accordingly, the Commission concludes that interference allegations based on reverse intermodulation products arising from Channel 51 broadcast operations are not an impediment to implementation of the voluntary industry solution for achieving interoperability.

2. Clearing Channel 51

43. While the Commission finds that the presence of Channel 51 broadcast stations is not an impediment to 700 MHz interoperability, the clearing of Channel 51 broadcast stations can lead to other important public interest benefits by removing certain limitations placed on operations in the adjacent Lower A Block. The Commission has taken a number of steps to limit the potential impact of Channel 51 broadcast operations on the use of Lower 700 MHz band spectrum. In August 2011, the Media Bureau adopted a freeze on both the filing of new applications and the processing of pending applications with respect to operations on Channel 51, in order to permit the Commission to evaluate claims of interference for Lower 700 MHz A Block licensees in planning their network deployments. In addition, the Media Bureau lifted the previous freeze on the filing of petitions for rulemaking by full power television stations seeking to relocate from Channel 51 pursuant to voluntary relocation agreements with Lower 700 MHz A Block licensees. Media Bureau staff has approved, or has under review, agreements to relocate Channel 51 operations or otherwise modify those operations that reduce the possibility of interference.

44. Moreover, in September 2012, the Commission launched, pursuant to the Spectrum Act, the incentive auction process with the aim of repurposing broadcast television spectrum for mobile broadband use. In the *Incentive Auctions NPRM,* 77 FR 69933, Nov. 21, 2012, the Commission sought comment on facilitating requests for channel relocation prior to the auction associated with voluntary agreements between the affected parties. In addition, the Commission clarified that any Channel 51 station that relocates pursuant to a private arrangement, and is subsequently required to relocate a second time because its channel assignment is changed during the auction's repacking process, will be eligible for payment of costs and will

not be disadvantaged in its ability to claim reimbursement.

45. In April 2012, the Commission adopted rules for the sharing of broadcast channels in connection with the incentive auction. The Commission is interested in possibly authorizing one or more channel sharing pilots in order to demonstrate the technical and legal arrangements necessary to implement a successful channel sharing operation. The Commission encourages Channel 51 broadcasters to consider participating in such a pilot and to bring proposals for channel sharing pilots to the Media Bureau for consideration. Although it is likely that Channel 51 clearing issues in connection with the *Incentive Auctions* proceeding will not be resolved and fully implemented for several years, the Commission notes that all of the band plans in the *Incentive Auctions NPRM* and record propose to clear Channel 51, and that the *Incentive Auctions NPRM* seeks comment on the appropriate length of time for television stations to move channels or cease broadcasting after the completion of the incentive auction.

C. Transition to Interoperability

46. *Background.* In the *Interoperability NPRM,* the Commission expressed its preference for an industry solution to the lack of interoperability in the Lower 700 MHz band. The Commission stated that an industry solution would be preferable because it would allow the market greater flexibility in responding to evolving consumer needs and dynamic and fast-paced technological developments. At the same time, the Commission recognized that, if the industry failed to move toward interoperability in a timely manner, additional regulatory steps might be justified.

47. *Discussion.* As noted above, an industry solution that will resolve the lack of interoperability in the Lower 700 MHz band has now been developed. In a letter filed on September 10, 2013, AT&T committed to adopting interoperability upon resolution of interference issues associated with high power broadcast transmissions from the Lower 700 MHz E Block. A coalition of Lower 700 MHz A Block licensees, joined by the Competitive Carriers Association, filed a letter supporting AT&T's commitments as a means to ensure restoration of interoperability. Having resolved the potential interference issues as discussed above, the Commission now takes steps to implement AT&T's voluntary commitments and establish a path to interoperability in the Lower 700 MHz band.

48. Specifically, pursuant to Section 316, the Commission proposes in the Order of Proposed Modification below to modify AT&T's B and C Block licenses to implement its interoperability commitments. AT&T's commitments are premised on final resolution of the E Block interference issues, in accordance with the power and height limitations adopted above. AT&T Sept. 10, 2013 Ex Parte at 6. These commitments relate both to AT&T's deployment of a Multi-Frequency Band Indicator (MFBI) software feature (a network technology that enables interoperability by permitting simultaneous support of both Band Class 12 and Band Class17 devices) and to AT&T's transition to Band Class 12 capable devices. As set out in AT&T's letter:

Deployment of MFBI

(1) AT&T commits to moving forward expeditiously with testing the 3GPP Multi-Frequency Band Indicator software feature as soon as it is made available to AT&T by its RAN vendors. AT&T further agrees to fully deploy the new MFBI software feature in its 700 MHz network within 24 months of September 30, 2013. The end of the 24-month period will also commence the beginning of the device roll-out period.

(2) If AT&T concludes that, despite its best efforts, implementation of the MFBI feature within 24 months as committed to herein will result in significant negative customer impact, AT&T will file a certification, consistent with Commission rules (including but not limited to §§ 1.16, 1.17 and 1.65), so asserting and outlining in specific detail the commercially reasonable steps taken to meet the deadline and the reason for the delay. Any such filing must be made on or before August 31, 2015. With the filing of such a certification, the 24-month deadline for MFBI implementation and the start of the Band 12 capable device roll-out period shall be extended by the period requested in the certification, up to an additional 6 months.

(3) Once MFBI has been fully implemented by AT&T consistent with paragraph 2, AT&T shall provide LTE roaming to carriers with compatible Band 12 devices, consistent with the Commission's rules on roaming.

The Transition

(4) Band 12 capable device shall mean any device that is capable of supporting 3GPP Band Class 12. At this time, AT&T is exploring various Band 12 implementation approaches with its chipset and OEM partners and AT&T reserves the right to pursue the most efficient solutions available based on evolving network and device capabilities on a technology neutral basis.

(5) During the first year of the device roll-out period, 50% of all new unique devices that operate on the paired Lower 700 MHz bands, as identified by unique SKU numbers, introduced by AT&T into its device portfolio will be Band 12 capable devices. Memory or color finish variations on a single device shall not be considered separate unique SKUs. Machine-to-Machine (M-to-M) devices shall not be counted as new unique devices for purposes of this commitment.

(6) During the second year of the device roll-out period, 75% of new unique devices that operate on the paired Lower 700 MHz bands, as identified by unique SKU numbers, introduced by AT&T into its device portfolio will be Band 12 capable devices. Memory or color finish variations on a single device shall not be considered separate unique SKUs. M-to-M devices shall not be counted as new unique devices for purposes of this commitment.

(7) Commencing at the conclusion of the second year of the device roll-out period, all new unique devices that operate on the paired Lower 700 MHz bands introduced by AT&T into its device portfolio will be Band 12 capable devices. In addition, from that time forward, AT&T will agree that its specifications for all new devices that are designed to operate in the paired Lower 700 MHz frequencies, including M-to-M devices, will call for Band 12 capability. However, M-to-M devices shall not be counted as new unique devices for purposes of this commitment.

(8) The commitments outlined above apply to all new unique data-capable devices that connect to or provide connectivity on AT&T's paired Lower 700 MHz FDD network. AT&T's commitment shall not extend to any devices that are uniquely designed to operate on spectrum bands owned and operated by AT&T that are not in the paired Lower 700 MHz bands. AT&T reserves the express right to support devices that do not operate in the paired Lower 700 MHz bands.

(9) To demonstrate progress on its commitments, AT&T shall submit comprehensive written reports and meet with the Commission staff at each of 12 months, 18 months and 24 months from the date of its September 10, 2013 commitment letter that will provide information on AT&T's progress toward meeting these commitments. Additionally, AT&T shall provide

comprehensive written reports at 28 months, 40 months and 46 months to report on progress during the device roll-out period, and it shall file a certification to the Commission at the end of the device roll-out period to certify final completion of these commitments within 30 days.

(10) Fulfillment of these commitments will require the implementation of new functionality in AT&T's paired Lower 700 MHz network as well as collaboration with AT&T's chipset and OEM partners and vendors. AT&T will use its best efforts to proceed diligently to complete the activities necessary to fulfill its commitments. However, if at any time, AT&T encounters obstacles beyond its control that threaten its ability to meet these commitments, or undermine the quality of the service it is providing on its network, AT&T reserves the right to so inform the Commission and seek an extension of time or a waiver as appropriate.

(11) Consistent with these commitments, AT&T anticipates that its focus and advocacy within the 3GPP standards setting process will shift to Band 12 related projects and work streams. More specifically, upon adoption of this commitment, AT&T commits to placing priority within the 3GPP RAN committee on the development of various Band 12 carrier aggregation scenarios. Upon completing implementation of the MFBI feature, AT&T anticipates that its focus on new standards related to the paired Lower 700 MHz spectrum will be almost exclusively on Band 12 configurations, features and capabilities. AT&T reserves the right to seek revisions and updates to Band 17 standards to the extent necessary to support legacy Band 17 devices and continuing Band 17 functionality on its network.

(12) AT&T's commitments to Lower 700 MHz interoperability outlined in its letter are premised on final resolution of the E Block interference issues, which requires the Commission to adopt an Order requiring that all E Block licensees transmitting a signal with an emission bandwidth greater than 1 megahertz are restricted to an ERP of 1,000 to 2,000 watts/MHz and an antenna height of 305 m above average terrain. AT&T anticipates that the Commission will adopt such an Order no later than December 31, 2013. If such an Order is not adopted by the Commission, or if it is adopted but subject to appellate review, AT&T reserves the right to declare these commitments null and void.

49. The Commission finds that implementing the voluntary industry solution for interoperability by adopting AT&T's commitments as modifications would promote the public interest, convenience and necessity. These modifications would establish a clear path toward interoperability for the Lower 700 MHz band. In doing so, they would promote the efficient use of spectrum, the availability of higher quality and lower priced offerings and enhanced choices for customers of all wireless broadband providers, overall timely deployment of nationwide wireless broadband coverage, and the delivery of such service to rural and underserved areas. Its actions in proposing these modifications here are consistent with the Commission's longstanding interest in promoting the interoperability of mobile services (an objective that has been realized for cellular, PCS, AWS, and public safety broadband service), and allow the market greater flexibility in responding to evolving consumer needs and dynamic and fast-paced technological developments. By ensuring that AT&T, the largest license holder of spectrum in the B and C Blocks, transitions to interoperability, the Commission concludes that the steps it takes today will be enough to ensure that the public interest benefits of interoperability are realized while avoiding unnecessary regulatory burdens.

50. The record demonstrates that the existence of two incompatible band classes is a substantial obstacle to the ability of subscribers to switch their service provider to take advantage of higher quality or lower cost service. Conversely, as the Commission has recognized, interoperability directly promotes the ability of consumers to switch * * * at low cost. Accordingly, by establishing a clear path to interoperability, the Commission promotes consumers' ability to choose the higher quality service at affordable prices and thus increased competition.

51. In addition, adopting the industry plan for achieving interoperability will help promote deployment of mobile broadband services and the full and efficient use of Lower 700 MHz spectrum. The record shows that the absence of interoperability has delayed deployment of networks in Lower 700 MHz band spectrum. U.S. Cellular, for example, asserts that, except for its own deployment, ''there has been no comparable deployment of advanced 4G LTE services by Band 12 licensees, including Cavalier Wireless, LLC, Continuum 700 LLC, C Spire Wireless, Vulcan Wireless LLC and others, despite significant efforts to overcome the lack of a Band 12 device ecosystem. Cox TMI Wireless LLC even was forced to abandon its original plans to launch 4G LTE services. Likewise, Cellular South, Inc. d/b/a C Spire Wireless (Cellular South) asserts that the lack of available Band Class 12 devices and the inability of such devices to roam nationwide render the current environment inadequate ''to support commercial deployment of a LTE network on Band 12.'' Cavalier Wireless argues that the lack of interoperability has delayed new wireless broadband deployments, services, and competition in Mississippi, Arkansas, and in rural states across the country.

52. The record indicates that interoperability will promote further build out and deployment of Lower 700 MHz spectrum, with the resulting benefits of competitive mobile broadband service available to consumers. Cellular South, for example, asserts that, upon adoption of an interoperability requirement, it would begin network design, site acquisition, and engaging equipment and device vendors to support the deployment of 4G LTE services. Other parties likewise assert that resolving interoperability would facilitate their deployment of advanced wireless services. The Commission finds that the lack of interoperability and of the development of a Band Class 12 ecosystem has seriously limited development of the Lower 700 MHz band and that 700 MHz interoperability will encourage and enable Lower 700 MHz A Block licensees to further invest in and build out advanced broadband networks. The difficulties of obtaining prompt delivery from vendors of the choices of 4G devices at affordable prices necessary to attract and retain subscribers have discouraged LTE network deployments for smaller new market entrants. The Commission concludes that, by promoting deployment of advanced mobile broadband networks, AT&T's interoperability commitments would serve the public interest by encouraging licensees to deploy networks in the Lower 700 MHz band using the most efficient wireless technology available today.

53. The Commission's actions today also further its statutory mandate to promote nationwide service. Most A Block licensees are small or regional businesses, many of which provide or would be able to provide wireless broadband service to nearly 50 million people in rural areas, where 1.3 million people (and approximately 13% of rural road miles) still lack any such service at all. More than one-third of the population in rural areas still lacks coverage from more than two mobile broadband service providers. Rural low density areas are often low income areas

(per capita income less than $30,000 per year.) Evidence in the record shows that the absence of interoperability has affected these licensees' ability to deploy broadband services in the Lower 700 MHz bands. By eliminating barriers to deployment by small and rural providers, the Commission takes another important step toward fulfilling its mandate to bring these advanced services, so far as possible, to all the people of the United States.

54. In addition, the AT&T license modifications the Commission proposes today in the Order of Proposed Modification below also will help promote reasonable roaming arrangements among 700 MHz providers. As noted above, AT&T commits to providing LTE roaming to carriers with compatible Band 12 devices once AT&T has implemented the MFBI software feature in its network. As a result, the number of technically compatible providers for nationwide LTE roaming partnerships would increase.

D. Performance Requirements and Construction Benchmarks

1. Construction Benchmarks Applicable to Lower 700 MHz E Block

55. *Background.* Section 27.14(g) of the Commission's rules requires EA licensees holding authorizations for Block E in the 722–728 MHz bands to provide signal coverage and offer service over at least 35 percent of the geographic area of their license no later than June 13, 2013, or within four years of initial license grant, if the initial authorization is granted after June 13, 2009. Certain E Block licensees in the band, including DISH, have requested a waiver of § 27.14(g) seeking an extension of the interim construction benchmark deadline to at least two years from the current deadline, stating they have faced challenges related to equipment availability and uncertainty created by the *Interoperability NPRM,* including the possibility that the Commission may ''dramatically reduce maximum operation power in the Lower 700 MHz E Block. As discussed above, DISH outlined its proposal to address interference concerns regarding high-powered operations in the E Block spectrum, contingent on certain Commission actions, including extending relief regarding its Lower 700 MHz E Block buildout requirements.

56. *Discussion.* Today the Commission adopts technical rule changes affecting all Lower 700 MHz E Block licensees to reduce potential interference and facilitate interoperability in the 700 MHz band, and in order to more fully implement the voluntary industry solution, including DISH's commitment, the Commission finds it is in the public interest to provide the same regulatory flexibility to all E Block licensees to promote rapid deployment of mobile broadband services. Accordingly, the Commission takes various actions discussed below. The Commission grants the requests for extension of time or waiver regarding 700 MHz E Block licenses filed by DISH and Kurian only to the extent discussed herein and extend relief to all active Lower 700 MHz band E Block licensees regarding certain buildout requirements. The Commission also provides additional relief on its own motion to all active Lower E Block licensees as discussed below to facilitate implementation of the industry solution. Specifically, for all active Lower 700 MHz E Block licensees, the Commission extends the interim construction benchmark deadline in § 27.14(g) until March 7, 2017 and the end-of-term construction benchmark deadline in § 27.14(g) until March 7, 2021. This additional time will afford licensees a sufficient opportunity to adjust their business plans in light of the technical changes to the band and also provide valuable services to the public in the near term. The Commission also waives the ten-year license period set forth in § 27.13(b) and extends the license term for all active Lower 700 MHz E Block licensees until March 7, 2021.

57. The Commission waives § 27.14(g) for all active Lower E Block licensees in order to permit them to meet a population-based coverage requirement as an alternative to the geographic-based requirement in § 27.14(g). Specifically, the Commission waives the requirement that Lower 700 MHz band E Block licensees must provide signal coverage and offer service over at least 35 percent of the geographic area to meet the interim construction benchmark deadline and provide signal coverage and provide service over at least 70 percent of the geographic area to meet the end-of-term construction benchmark deadline. Under this waiver, all active Lower 700 MHz band E Block licensees may meet their interim construction benchmark deadline by providing signal coverage and offering service to at least 40 percent of its total E Block population, and a licensee's total E Block population shall be calculated by summing the population of each of its license areas in the E Block. Under this waiver, all active Lower 700 MHz band E Block licensees may meet their end-of-the term construction benchmark deadline by providing signal coverage to at least 70 percent of the population in each of its license areas. When filing a notification of construction pursuant to § 1.946(d), licensees must state whether they are using the population-based performance benchmark or the geographic-based performance benchmark to meet the respective interim and end-of-term requirements.

58. The Commission also waives § 27.14(g)(1) to the extent necessary and, accordingly provides that in the event a Lower 700 MHz E Block licensee fails to either provide signal coverage and offer service to either 40 percent of its total E Block population or provide signal coverage or offer service over at least 35 percent of the geographic area by March 7, 2017, the term of that license authorization will be reduced by one year.

59. Finally, the Commission grants a limited waiver of § 27.14(l) to extend the deadline until March 7, 2019, for the filing of the required second status report regarding the licensees' efforts to meet the performance requirements applicable to their authorizations in their respective spectrum bands and the manner in which that spectrum is being utilized.

2. Interim Construction Deadlines for A and B Block Licenses

60. *Background.* As noted above, the Commission adopted performance requirements for the 700 MHz band to promote commercial access to the spectrum that require licensees to provide specified levels of service and certain consequences for failing to meet those requirements within prescribed timeframes. For licensees that fail to meet the applicable interim benchmark, the license term is reduced by two years, which would require that the end-of-term benchmark be met within eight years, and the Commission may take other enforcement action. At the end of the license term, licensees that fail to meet the end-of-term benchmark are subject to a keep what you use rule, which will make unused spectrum available to other potential users.

61. The Commission takes the opportunity in the R&O and Order to address the requests for waiver and extension of the interim construction benchmark deadline filed individually by Lower 700 MHz band A and B Block licensees, which the Wireless Telecommunications Bureau placed on public notice in a separate docket. The Commission also recognizes that the issues raised in this proceeding may substantially affect Lower 700 MHz band licensees that have not specifically sought an extension of the interim

construction benchmark deadline. In light of today's action reducing permissible ERP levels for D and E Blocks and voluntary industry commitments on the record to promote interoperability, the Commission extends the interim construction benchmark deadline for all active 700 MHz band Lower A and B Block licensees until December 13, 2016, and issue a waiver of the interim construction benchmark deadline for certain Lower 700 MHz A Block licensees as described below.

62. Specifically, as their interim construction benchmark deadlines approached, a number of Lower 700 MHz band A and B Block licensees requested a waiver of § 27.14(g) of the rules to provide for an extension of at least two years from the applicable interim construction deadlines. These licensees generally claimed that an extension or a waiver is warranted for reasons including a lack of interoperability in the 700 MHz band. Some of the licensees claimed an extension was warranted because of issues regarding protection of TV Channel 51 stations, and some licensees claimed that high power Lower 700 MHz band E Block operations have affected their ability to meet the deadline.

63. As discussed above, on September 10, 2013, DISH filed a letter stating that it will consent to an ERP reduction of its base stations for its Lower 700 MHz band E Block licenses. AT&T also filed a letter on September 10, 2013, stating that it is committed to supporting interoperability in the Lower 700 MHz band, conditioned on final resolution of the E Block interference issue. As outlined above, AT&T provided a number of commitments to achieve this goal including a staggered rollout period during which AT&T will introduce Band Class 12 capable devices into its device portfolio.

64. *Discussion.* In the extension requests, licensees claim that, due to a lack of available devices, they are unable to offer compelling or competitive advanced mobile services to potential customers and therefore building out such a network by the current interim deadline is not economically viable. Further, licensees state that the fragmentation of the Lower 700 MHz band was unforeseen, making the situation unique and unusual. The Commission finds that today's decision, in conjunction with the voluntary industry commitments on the record, addresses these concerns and will facilitate interoperability and promote rapid deployment of advanced mobile services for consumers. The vast majority of licensees seek an extension of the interim construction benchmark deadline until two years after the Commission concludes the interoperability rulemaking proceeding. Taking into account today's action and the timeline specified by AT&T for roll-out of Band Class 12 capable devices, the Commission finds that an extension until December 13, 2016 will allow licensees to make appropriate business decisions regarding build-out and to meet the interim construction benchmark deadline. The Commission therefore extends the interim construction benchmark deadline in § 27.14(g) until December 13, 2016 for all active Lower 700 MHz band A and B Block licensees, with certain exceptions described below.

65. The Commission finds it in the public interest to waive the interim construction benchmark deadline for certain Lower 700 MHz A Block licensees that must limit their deployments in order to protect incumbent Channel 51 operations. Pursuant to § 27.60, Lower 700 MHz band A Block licensees must provide interference protection to existing U.S. full power DTV and Class A stations operating in the adjacent Channel 51 by maintaining a minimum distance separation (from base station to TV transmitter) of as much as 108 km. Further, § 27.60 specifies a minimum distance separation of 96.5 km between mobile units operating on the A Block adjacent to Channel 51 broadcast stations. A substantial number of Lower 700 MHz A Block licensees argue in requests for extension of the interim construction benchmark deadline that Channel 51 broadcasters have been unwilling to negotiate consent or relocation agreements in advance of the impending incentive auction, leaving affected licensees with no reasonable alternative for providing service to certain areas of their markets before the interim deadline. Based on the record, the Commission finds that, although interoperability is likely to facilitate the provision of service by many licensees with Channel 51 broadcast stations in their license areas, relief from the particular interim construction benchmark deadline is warranted in certain circumstances. The Commission therefore waives, on its own motion, the interim construction benchmark deadline of § 27.14(g) for each Lower 700 MHz band A Block licensee where a 108 km radius around a Channel 51 transmitter overlaps at least a portion of the license's market area (overlap) and either: (1) 30 percent or more of the geographic license area is within that overlap; or (2) less than 30 percent of the geographic license area is within that overlap but more than two-thirds of the population is within that overlap. The Commission finds that such relief is necessary because these licensees either face siting restrictions in a substantial portion of their license areas, or a majority of the market's population is in an area of overlap. Accordingly, these licensees will only be subject to the end-of-term construction benchmark requirement and other status reporting requirements. The Commission expects that many Lower 700 MHz band A Block licensees will provide service in areas unaffected by the existence of Channel 51 and that others will take meaningful steps toward constructing their systems even while broadcasters remain on Channel 51—such as procuring equipment, designing their networks, and securing transmitter sites—so that installation, testing, and deployment can occur rapidly upon relocation of the broadcasters. The Commission notes that 700 MHz band licensees are free to negotiate early relocation agreements with Channel 51 broadcasters to further speed deployment.

66. Finally, for all active Lower 700 MHz band A and B Block licensees, other than licensees subject to a waiver of the interim construction benchmark deadline due to Channel 51 interference protection requirements, as described above, the Commission waive the requirements in § 27.14(l) of the Commission's rules that these licensees file a second status report regarding the licensees' efforts to meet the performance requirements applicable to their authorizations in their respective spectrum bands and the manner in which that spectrum is being utilized. The Commission adopted reporting requirements ''to monitor whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand.'' Due to the extended interim construction benchmark deadline, licensees will now file similar information in their notifications of construction in December 2016, shortly after the existing deadlines for the second status report. Therefore, the Commission finds it is in the public interest to reduce filing burdens on the industry and waive the requirement that Lower 700 MHz band A and B Block licensees file a second status report. However, because A Block licensees sufficiently affected by Channel 51 interference protection requirements to

warrant a waiver of the interim construction benchmark deadline will not file interim notifications of construction, the Commission does not waive the § 27.14(l) requirement and these licensees are still required to file a second status report on June 13, 2016, so that the Commission can monitor their buildout progress.

IV. Order of Proposed Modification

67. For the reasons discussed above, the Commission proposes to modify AT&T's B and C Block licenses pursuant to § 316 to implement the commitments contained in AT&T's letter of September 10, 2013 and effectuate the voluntary industry solution that will resolve the lack of interoperability in the Lower 700 MHz band in an effective and efficient manner. Specifically, pursuant to Section 316, the Commission proposes to modify AT&T's B and C Block licenses to implement the following interoperability commitments. These commitments relate both to AT&T's deployment of a Multi-Frequency Band Indicator (MFBI) software feature and to AT&T's transition to Band Class 12 capable devices. For the reasons discussed throughout the R&O and Order, the Commission concludes that it is in the public interest, convenience, and necessity to propose to modify AT&T's B and C Block licenses as follows:

- AT&T must move forward expeditiously with testing the 3GPP Multi-Frequency Band Indicator software feature as soon as it is made available to AT&T by its RAN vendors. AT&T must fully deploy the new MFBI software feature in its 700 MHz network within 24 months of September 30, 2013. The end of the 24-month period will also commence the beginning of the Band 12 capable device roll-out period.
- If AT&T concludes that, despite its best efforts, implementation of the MFBI feature within 24 months will result in significant negative customer impact, AT&T will file a certification, consistent with Commission rules (including but not limited to §§ 1.16, 1.17 and 1.65), so asserting and outlining in specific detail the commercially reasonable steps taken to meet the deadline and the reason for the delay. Any such filing must be made on or before August 31, 2015. With the filing of such a certification, the 24-month deadline for MFBI implementation and the start of the Band 12 capable device roll-out period shall be extended by the period requested in the certification, up to an additional 6 months.
- Once MFBI has been fully implemented by AT&T, AT&T shall provide LTE roaming to carriers with compatible Band 12 devices, consistent with the Commission's rules on roaming.
- Band 12 capable device shall mean any device that is capable of supporting 3GPP Band Class 12. At this time, AT&T is exploring various Band 12 implementation approaches with its chipset and OEM partners and AT&T may pursue the most efficient solutions available based on evolving network and device capabilities on a technology neutral basis.
- During the first year of the device roll-out period, 50% of all new unique devices that operate on the paired Lower 700 MHz bands, as identified by unique SKU numbers, introduced by AT&T into its device portfolio will be Band 12 capable devices. Memory or color finish variations on a single device shall not be considered separate unique SKUs. Machine-to-Machine (M-to-M) devices shall not be counted as ''new unique devices'' for purposes of this commitment.
- During the second year of the device roll-out period, 75% of new unique devices that operate on the paired Lower 700 MHz bands, as identified by unique SKU numbers, introduced by AT&T into its device portfolio will be Band 12 capable devices. Memory or color finish variations on a single device shall not be considered separate unique SKUs. M-to-M devices shall not be counted as new unique devices for purposes of this commitment.
- Commencing at the conclusion of the second year of the device roll-out period, all new unique devices that operate on the paired Lower 700 MHz bands introduced by AT&T into its device portfolio will be Band 12 capable devices. In addition, from that time forward, AT&T must ensure that its specifications for all new devices that are designed to operate in the paired Lower 700 MHz frequencies, including M-to-M devices, will call for Band 12 capability. However, M-to-M devices shall not be counted as new unique devices for purposes of this commitment.
- The commitments outlined above apply to all new unique data-capable devices that connect to or provide connectivity on AT&T's paired Lower 700 MHz FDD network. AT&T's commitment shall not extend to any devices that are uniquely designed to operate on spectrum bands licensed for use by AT&T that are not in the paired Lower 700 MHz bands. AT&T reserves the express right to support devices that do not operate in the paired Lower 700 MHz bands.
- To demonstrate progress on its commitments, AT&T shall submit comprehensive written reports and meet with the Commission staff at each of 12 months, 18 months and 24 months from the date of its September 10, 2013 commitment letter that will provide information on AT&T's progress toward meeting these commitments. Additionally, AT&T shall provide comprehensive written reports at 28 months, 40 months and 46 months to report on progress during the device roll-out period, and it shall file a certification to the Commission at the end of the device roll-out period to certify final completion of these commitments within 30 days.
- Fulfillment of these commitments will require the implementation of new functionality in AT&T's paired Lower 700 MHz network as well as collaboration with AT&T's chipset and OEM partners and vendors. AT&T will use its best efforts to proceed diligently to complete the activities necessary to fulfill its commitments. However, if at any time, AT&T encounters obstacles beyond its control that threaten its ability to meet these commitments, or undermine the quality of the service it is providing on its network, AT&T may so inform the Commission and seek an extension of time or a waiver as appropriate.
- Consistent with these commitments, AT&T anticipates that its focus and advocacy within the 3GPP standards setting process will shift to Band 12 related projects and work streams. AT&T must place priority within the 3GPP RAN committee on the development of various Band 12 carrier aggregation scenarios. Upon completing implementation of the MFBI feature, AT&T anticipates that its focus on new standards related to the paired Lower 700 MHz spectrum will be almost exclusively on Band 12 configurations, features and capabilities. AT&T may seek revisions and updates to Band 17 standards to the extent necessary to support legacy Band 17 devices and continuing Band 17 functionality on its network. As discussed above, AT&T's commitments were premised on final resolution of the E Block interference issues. By this Order, the Commission modifies the E Block technical rules to address the E Block interference issues. AT&T has reserved the right to declare its commitments null and void if those modifications are not adopted by December 31, 2013, or if adopted but subject to appellate review. Because resolution of the E Block interference issue has always been essential to a resolution of the interoperability issue, any order of modification of AT&T's

licenses pursuant to the terms of the foregoing proposal shall become effective only at such time as the changes adopted today to the technical rules applicable to E Block operations become final and unappealable. In the event that AT&T elects to declare its commitments null and void, the Commission continues to retain all its authority under the Communications Act of 1934, as amended, to adopt any rules or further orders in this proceeding necessary or appropriate to promote interoperability in the Lower 700 MHz band.

68. The Commission finds that the proposed license modifications will serve the public interest by establishing a clear path toward interoperability for the Lower 700 MHz band. Resolving the lack of interoperability is an important objective for the Commission and the Commission intends to remain vigilant to ensure that AT&T follows through with its commitments and transitions to interoperability in an efficient manner.

69. The Commission finds that it has the legal authority to adopt these proposed modifications to AT&T's licenses. Section 316 of the Act authorizes the Commission to ''modif[y]'' existing licenses when taking such action will ''promote the public interest, convenience, and necessity.'' Title III provides the Commission with broad authority to manage spectrum and endows the Commission with ''expansive powers'' and a ''comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.' '' Section 303 of the Act, authorizes the Commission to exercise its authority as ''the public interest, convenience, and necessity requires'' to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.''

70. The Commission finds that these provisions give it ample authority to adopt the proposed modifications to AT&T's B and C Block licenses, which track AT&T's commitments and which the Commission finds to be in the public interest. Specifically, the Commission finds that, pursuant to its authority under Title III, the proposed modifications described above will ''promote the public interest, convenience, and necessity'' by promoting competition and consumer choice among mobile broadband service providers for innovative services (both initially and in switching to higher quality or lower cost offerings), promoting the widespread deployment of 4G networks (particularly in rural and unserved areas), and strengthening the ability of providers to offer consumers nationwide coverage. Establishing interoperability will remove barriers to infrastructure investment for mobile broadband services and increase spectrum utilization among Lower 700 MHz A Block licensees.

71. In accordance with section 316(a) of the Communications Act, as amended, and § 1.87(a) of the Commission's rules, the Commission will not issue a modification order(s) until AT&T has received notice of the Commission's proposed action and has had an opportunity to protest. The Commission directs the staff to send the R&O and Order by certified mail, return receipt requested to AT&T. Pursuant to section 316(a)(1) of the Act and § 1.87(a) of the Commission's rules, receipt of the R&O and Order by certified mail, return receipt requested, shall constitute notification in writing of its Order of Proposed Modification proposing to modify AT&T's B and C Block licenses and of the grounds and reasons therefor. AT&T shall have until January 15, 2014 to protest such Order of Proposed Modification. For the reasons discussed throughout the R&O and Order, the Commission finds that it will serve the public interest to adopt the voluntary industry solution that will provide interoperability in the Lower 700 MHz band. To effectuate the terms of the industry agreement, the Commission concludes that it is reasonable to allow AT&T until January 15, 2014 to protest the proposed license modifications. To protest the proposed modifications, AT&T must, by January 15, 2014 submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed in the Electronic Comment Filing System (ECFS) under WT Docket No. 12–69 or with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., Room TW–A235, Washington, DC 20554; and the protesting party must send a copy of the protest via electronic mail to Jennifer Salhus of the Spectrum Competition and Policy Division of the Wireless Telecommunications Bureau at *Jennifer.Salhus@fcc.gov.* Once the protest period has lapsed, AT&T's right to file a protest expires, and the Commission may modify the licenses as noticed.

72. The Commission delegates to the Wireless Telecommunications Bureau the authority to issue a license modification order for AT&T's B and C Block licenses, but the Bureau's delegation of authority does not extend to any modification of AT&T's B and C Block licenses that is materially different from the provisions in paragraphs 67 through 70 above.

73. *Ex Parte Status.* Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a), a license modification proceeding under Title III of the Communications Act is treated as a restricted proceeding for *ex parte* purposes under § 1.1208 of the Commission's rules. In this case, the license modification proceedings are related to the above-captioned rulemaking proceeding, WT Docket No. 12–69, which is designated as a permit but disclose proceeding under the *ex parte* rules. Due to the interrelated nature of these proceedings, the Commission finds that it is in the public interest to treat the license modification proceedings as permit but disclose proceedings under § 1.1206 of the Commission's rules. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject license modification proceedings subsequent to the release of this Order of Proposed Modification will be permissible but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation the Commission, was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). For administrative convenience only, any filings related to this Order of Proposed Modification must be filed in WT Docket No. 12–69 and may be filed using the Electronic

Comment Filing System (ECFS), *http://apps.fcc.gov/ecfs/2d.* In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

V. Procedural Matters

A. Final Regulatory Flexibility Analysis

74. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Interoperability NPRM.* The Wireless Telecommunications Bureau (WTB) sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

75. The Commission finds that it would serve the public interest to analyze the possible significant economic impact of the policy and rule changes in the 700 MHz band on small entities. Accordingly, this FRFA contains an analysis of this impact in connection with the technical rule changes that fall within the scope of the Report and Order.

B. Need for, and Objectives of, the Report and Order

76. The R&O and Order takes steps to implement an industry solution to provide interoperable long term evolution (LTE) service in the Lower 700 MHz band in an efficient and effective manner to improve choice and quality for consumers of mobile services. The public interest benefits of the steps taken in the Report and Order will assist consumers and the economies in rural areas, as well as for small and regional businesses that operate there. Small or regional providers serving rural areas drive economic growth in these rural areas, directly, by investing in their networks and creating jobs, and indirectly, by enabling the growth of other small businesses. But in order to promote competition—and enable small business customers of 700 MHz band licensees to operate successfully in the 21st century—these licensees need to be able to offer service choices, including the potential for nationwide coverage through roaming, comparable to those offered by the national providers. Interoperability of LTE service in the Lower 700 MHz band will remove an unnecessary barrier to the successful operation of businesses that can drive economic growth, promote competitive service, and create jobs in rural America.

77. To effectuate the industry solution, the Report and Order addresses interference concerns that have been raised as possible obstacles to interoperability. It finds that, under the current rules, there is a significant threat of harmful interference from high power transmissions in the Lower 700 MHz D and E Blocks to Band Class 12 devices operating on the Lower 700 MHz B and C Blocks that could jeopardize the viability of interoperability in the band. The Report and Order therefore revises the technical rules applicable to the Lower 700 MHz D and E Blocks by reducing the maximum permissible power levels and antenna heights on these blocks. It also modifies the rules to limit all operations in the Lower 700 MHz D and E Blocks to downlink only. The Report and Order also provides that Lower 700 MHz D and E Block licensees may operate particular sites at power levels higher than permitted under the revised rules under certain specified conditions. The Report and Order finds these changes to be in the public interest because, without them, the public would not be able to realize the substantial benefits of mobile broadband deployment and interoperability in the Lower 700 MHz band. The technical changes the Report and Order adopts will continue to enable the six megahertz of unpaired Lower 700 MHz E Block spectrum to be put to commercial use while facilitating effective and efficient use of 36 megahertz of the Lower 700 MHz A, B, and C Blocks for mobile broadband services.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

78. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

79. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

80. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term small governmental jurisdiction is defined generally as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2007 indicate that there were 89,527 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

81. *Wireless Telecommunications Carrier (Except Satellite)* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. Under the present and prior categories, the SBA has deemed a wireless business to be small if it had 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 firms that operated for the entire year. Of this total, 10,791 firms had

employment of 999 or fewer employees and 372 had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Services (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

82. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—entrepreneur—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

83. In *2007,* the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

84. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as an industry that comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had fewer than 500 employees and 27 had more than 500 employees. Thus, under this size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

85. The Report and Order will not impose any new reporting or recordkeeping requirements on small entities. As described in Section A of this FRFA, to minimize interference and enable interoperability, the Report and Order revises the technical rules applicable to the Lower 700 MHz D and E Blocks by reducing the maximum permissible power levels and antenna heights on these blocks. It also modifies the rules to limit all operations in the Lower 700 MHz D and E Blocks to downlink only. The Report and Order also provides that Lower 700 MHz D and E Block licensees may operate particular sites at power levels higher than permitted under the revised rules under certain specified conditions.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

86. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

87. The changes to the rules will benefit small or regional wireless providers serving rural areas by facilitating Lower 700 MHz A Block operations because LTE service provided on the A Block would otherwise likely be subject to harmful interference from high-power operations in the Lower 700 MHz E Block. In particular, mobile devices operating near a Lower E Block transmitter but far from their serving LTE base stations face a substantial risk of receiving harmful interference from E Block transmitters. The potential for this interference would exist because of vastly different radio propagation characteristics between the high-powered Lower 700 MHz E Block and lower powered A Block LTE systems, and such interference would result in significant degradation of service to A Block operations in areas close to high-powered E Block transmitters. Accordingly, the changes to the technical rules will facilitate Lower A Block licensees' ability to provision mobile broadband LTE services to consumers in all of the paired Lower 700 MHz bands without significant service degradation.

88. In revising the technical rules for the Lower 700 MHz D and E Blocks, the Commission carefully considered the various benefits identified in the record, and the costs for Lower 700 MHz D and E Block licensees that would be associated with a new rule. The Commission considered alternative actions, including maintaining the current technical rules, but determined that modifying the power limits and antenna height restrictions for the Lower 700 MHz D and E Blocks would

enable Lower 700 MHz interoperability by resolving concerns about interference from high-powered transmissions. The Report and Order provides flexibility for licensees by indicating that Lower 700 MHz D and E Block licensees may operate particular sites at power levels higher than permitted under the revised rules under certain specified conditions.

89. In addition, to minimize the impact of the changes in the technical rules, the Report and Order waives the construction requirements, extending the construction benchmark deadlines for Lower 700 MHz A, B, and E Block licensees. The Report and Order concludes that waiving the construction requirements will allow licensees to make appropriate business decisions regarding build-out and to meet the construction benchmark deadlines.

90. *Report to Congress:* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

G. Paperwork Reduction Act Analysis

91. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

VI. Ordering Clauses

92. *It is ordered* that pursuant to sections 1, 2, 4(i), 4(j), 301, 302(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 301, 302a(a), 303(b), 303(e), 303(f), 303(g), 303(r), 304, 307(a), 309(j)(3), and 316(a)(1), and §§ 1.87 and 1.401 *et seq.* of the Commission's rules, 47 CFR 1.87, 1.401 *et seq.,* the R&O and Order *is adopted.*

93. *It is further proposed,* pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 316, and § 1.87 of the Commission's rules, 47 CFR 1.87, that AT&T's 700 MHz B and C Blocks licenses be modified consistent with Section IV (Order of Proposed Modification) of the R&O and Order. Pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), and § 1.87(a) of the Commission's rules, 47 CFR 1.87(a), receipt of the R&O and Order by certified mail, return receipt requested, shall constitute notification in writing of our Order of Proposed Modification that proposes to modify AT&T's Lower 700 MHz B and C Block licenses and of the grounds and reasons therefor, and AT&T shall have until January 15, 2014 to protest such Order of Proposed Modification. The Wireless Telecommunications Bureau is delegated authority to issue an order of modification if no protests are filed.

94. *It is further ordered* that the Wireless Telecommunications Bureau *shall send* the R&O and Order by certified mail, return receipt requested to AT&T.

95. *It is further ordered* that the license modification proceeding commenced by the Order of Proposed Modification shall be treated as a permit-but-disclose proceeding under the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.*

96. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(g) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(g), the Commission grants a limited waiver of § 24.14(g) and extends the interim construction benchmark deadline until December 13, 2016, for all active Lower 700 MHz band A and B Block licensees. Accordingly, the pending requests for extension and waiver of § 27.14(g) of the Commission's rules filed by Lower 700 MHz A and B Block are *granted* to the extent described herein and are otherwise *denied.*

97. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(g) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(g), the Commission waives, on its motion, the interim construction benchmark deadline in § 27.14(g) of the Commission's rules for each active Lower 700 MHz A Block licensee where a 108 km radius around a Channel 51 transmitter overlaps at least a portion of the license's market area (overlap) and either: (1) 30 percent or more of the geographic license area is within that overlap; or (2) less than 30 percent of the geographic license area is within that overlap but more than two-thirds of the population is within that overlap.

98. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(l) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(l), the Commission grants, on its own motion, a waiver of the requirement in § 24.14(l) for all active Lower 700 MHz band A and B Block licensees subject to the extended interim construction benchmark deadline to file a second status report regarding the licensees' efforts to meet the performance requirements applicable to their spectrum authorizations, except that Lower 700 MHz band A block licensees subject to a waiver of the interim construction benchmark deadline because of Channel 51 interference protection requirements shall remain subject to the § 27.14(l) requirement to file a second status report no later than June 13, 2016.

99. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(g) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(g), the Commission grants a limited waiver of § 24.14(g) to extend the interim construction benchmark deadline until March 7, 2017, for all active Lower 700 MHz band E Block licensees and, on its motion, extend the end-of-term construction benchmark deadline until March 7, 2021, for all active Lower 700 MHz band E Block licensees. Accordingly, the pending requests for extension and waiver of § 27.14(g) of the Commission's rules filed by Lower 700 MHz band E Block licensees are *granted* to the extent described herein and are otherwise *denied.*

100. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.13(b) of Commission's rules, 47 CFR 1.3, 1.925, and 27.13(b), the Commission grants, on its own motion, a waiver of § 24.13(b) and waive the ten year license period and extend the license term until March 7, 2021, for all active Lower 700 MHz E Block licensees.

101. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(g) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(g), the Commission grants, on its own motion, a limited waiver of § 24.14(g) to allow all active Lower 700 MHz band E Block licensees to meet their interim construction benchmark deadline by providing signal coverage and offering service to at least 40 percent of its total E Block population (where a licensee's total E Block population shall by calculated by summing the population of each its license areas in the E Block), and to meet their end-of-term construction

benchmark by providing signal coverage to at least 70 percent of the population in each of its license areas, as an alternative to meeting geographic-based performance requirements.

102. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(g) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(g), the Commission grants, on its own motion, a limited waiver of § 24.14(g) so that all active Lower 700 MHz band E Block licensees that fail to meet the interim construction benchmark deadline will have the term of that license authorization reduced by one year.

103. *It is further ordered* that pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. 154(i), and §§ 1.3, 1.925, and 27.14(l) of Commission's rules, 47 CFR 1.3, 1.925, and 27.14(l), the Commission grants, on its own motion, a limited waiver of the filing requirement in § 27.14(l), to extend the deadline until March 7, 2019, for all active Lower 700 MHz band E Block licensees to file a second status report regarding the licensees' efforts to meet the performance requirements applicable to their spectrum authorizations.

104. *It is further ordered* that part 27 of the Commission's rules *is amended* as set forth, effective December 5, 2013, except as otherwise provided herein.

105. *It is further ordered* that the Final Regulatory Flexibility Analysis hereto IS ADOPTED.

106. *It is further ordered* that the Commission SHALL SEND a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

107. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302(a), 303, 307, 309, 332, 336, 337, 1403, 1404, and 1451 unless otherwise noted.

■ 2. Section 27.2 is amended by adding paragraph (e) to read as follows:

§ 27.2 Permissible communications.

* * * * *

(e) *716–722 MHz and 722–728 MHz bands.* The 716–722 and 722–728 MHz frequencies may not be used for uplink transmission and must be used only for downlink transmissions.

■ 3. Section 27.50 is amended by revising paragraph (c)(7) and adding paragraphs (c)(12) and (13) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(c) * * *

(7) A licensee authorized to operate in the 710–716 or 740–746 MHz bands may operate a fixed or base station at an ERP up to a total of 50 kW within its authorized, 6 megahertz spectrum block if the licensee complies with the provisions of § 27.55(b). The antenna height for such stations is limited only to the extent required to satisfy the requirements of § 27.55(b).

* * * * *

(12) A licensee authorized to operate in the 716–722 or 722–728 MHz bands may operate a fixed or base station at an ERP up to a total of 50 kW within its authorized, 6 megahertz spectrum block if the licensee complies with the provisions of § 27.55(b), obtains written concurrences from all affected licensees in the 698–746 MHz bands within 120 km of the proposed high power site, and files a copy of each written concurrences with the Wireless Telecommunications Bureau on FCC Form 601. The antenna height for such stations is limited only to the extent required to satisfy the requirements of § 27.55(b).

(13) Licensees authorized to operate in the 716–722 or 722–728 MHz bands must coordinate with licensees with uplink operations in the 698–716 MHz band to mitigate the potential for harmful interference. Licensees authorized to operate in the 716–722 or 722–728 MHz bands must mitigate harmful interference to licensees' uplink operations in the 698–716 MHz band within 30 days after receiving written notice from the affected licensees. A licensee authorized to operate in the 716–722 or 722–728 MHz bands must ensure that 716–728 MHz band transmissions are filtered at least to the extent that the 716–728 MHz band transmissions are filtered in markets where the 716–728 MHz band licensee holds any license in the 698–716 band, as applicable. For purposes of coordination and mitigations measures in paragraphs (i) and (iii) below, network will be deemed ''deployed'' as of the date upon which the network is able to support a commercial mobile or data service. The coordination and mitigation measures should include, but are not limited to, the following:

(i) If a licensee operating in the 698–716 and 728–746 MHz band deploys a network after the 716–722 or 722–728 MHz bands licensee deploys a network on its 716–722 or 722–728 MHz spectrum in the same geographic market, the 716–722 or 722–728 MHz bands licensee will work with the licensee with uplink operations in the 698–716 MHz band to identify sites that will require additional filtering, and will help the licensee operating in the 698–716 and 728–746 MHz bands to identify proper filters;

(ii) The 716–722 or 722–728 MHz bands licensee must permit licensees operating in the 698–716 and 728–746 MHz bands to collocate on the towers it owns at prevailing market rates; and

(iii) If a 698–716 and 728–746 MHz bands licensee deploys a network before a licensee in the 716–722 or 722–728 MHz bands deploys a network in the same geographic market, the 716–722 or 722–728 MHz bands licensee will work with licensees in the 698–716 and 728–746 MHz bands to identify sites that will need additional filtering and will purchase and pay for installation of required filters on such sites.

* * * * *

[FR Doc. 2013–26484 Filed 11–4–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 214
Tuesday, November 5, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0601; Notice No. 25–13–13–SC]

Special Conditions: Learjet Inc. Model LJ–200–1A10; Airplane Fuselage Post-Crash Fire Survivability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Learjet Inc. Model LJ–200–1A10 airplane. This airplane will have a novel or unusual design feature associated with advanced composite materials in the construction of its fuselage and wings. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 20, 2013.

ADDRESSES: Send comments identified by docket number FAA–2013–0601 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Airframe/Cabin Safety Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2195; facsimile 425–227–1320; email *alan.sinclair@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On February 9, 2009, Learjet Inc. applied for a type certificate for their new Model LJ–200–1A10.

The Model LJ–200–1A10 is a business-class airplane with two high-bypass turbine engines and interior seating configuration for up to 10 passengers.

The Model LJ–200–1A10 is the first airplane manufactured by Learjet Inc. to utilize advanced composite materials in the construction of its fuselage and wings.

This proposed special condition is necessary to ensure a level of safety equivalent to that provided by 14 CFR part 25. Regulations applicable to burn requirements, including §§ 25.853 and 25.856(a), remain valid for this airplane but do not reflect the threat generated from toxic levels of gases produced from carbon-fiber/resin system materials following a post-crash fire scenario.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Learjet Inc. must show that the Model LJ–200–1A10 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model LJ–200–1A10 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model LJ–200–1A10 must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model LJ–200–1A10 will incorporate the following novel or unusual design features:

The Model LJ–200–1A10 is the first airplane manufactured by Learjet Inc. to utilize advanced composite materials in the construction of its fuselage and wings. In accordance with § 21.16, fuselage structure fabricated from monolithic carbon-fiber reinforced plastic (CFRP) prepreg material (reinforcement fiber pre-impregnated with a thermoplastic or thermoset resin matrix) constitutes a novel and unusual design feature for a large transport-category airplane certificated under 14 CFR part 25.

Discussion

Existing regulations do not adequately ensure that composite structure offers passengers the same protection from an on-ground, post-crash fire condition as would a conventional aluminum structure. Learjet is introducing a new material that may have different toxicity characteristics than those of traditional materials. Service experience has shown that, in post-crash fires, traditional aluminum structural materials emit acceptable toxicity levels. Therefore, it is necessary to ensure that the material being utilized does not reduce the survivability of the passengers during a post-crash fire or provide levels of toxic fumes that would be lethal or incapacitating, preventing evacuation of the aircraft following a crash scenario. This proposed special condition is necessary to ensure a level of safety equivalent to that provided by 14 CFR part 25. Regulations applicable to burn requirements, including §§ 25.853 and 25.856(a), remain valid for this airplane but are not sufficient to address the potential hazard from toxic levels of gases that might be produced from carbon fiber/resin system materials during a post-crash fire.

Applicability

As discussed above, these special conditions are applicable to the Model LJ–200–1A10. Should Learjet Inc. apply at a later date for a change to the type certificate to include another airplane model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Learjet Inc. Model LJ–200–1A10 airplanes.

The Learjet Model LJ–200–1A10 must show that toxic levels of gases produced from the composite-material system are in no way an additional threat to the passengers and their ability to evacuate when compared to an aluminum-constructed aircraft.

Issued in Renton, Washington, on October 18, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–26406 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 300

[Release No. SIPA–171; File No. SIPC–2012–01]

Securities Investor Protection Corporation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities Investor Protection Corporation (''SIPC'') filed a proposed rule change with the Securities and Exchange Commission (''Commission''). The proposed rule change amends SIPC Rule 400, entitled ''Rules Relating to Satisfaction of Customer Claims for Standardized Options,'' which relates to the satisfaction of customer claims for standardized options under the Securities Investor Protection Act of 1970 (''SIPA''). The Commission is publishing the proposed rule change for public comment. Because SIPC rules have the force and effect as if promulgated by the Commission, those rules are published in Title 17 of the Code of Federal Regulations.

DATES: Comments are to be received on or before November 26, 2013.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments concerning the foregoing by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/other.shtml)*; or
- Send an email to *rule-comments@sec.gov.* Please include File Number SIPC–2012–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions letters should refer to File Number SIPC–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Sheila Dombal Swartz, Special Counsel, at (202) 551–5545; or Kimberly N. Chehardy, Special Counsel, at (202) 551–5791, Office of Financial Responsibility, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: Pursuant to Section 3(e)(2)(A) of SIPA,[1] notice is hereby given that SIPC filed with the Commission on November 7, 2012, a proposed rule change, as described in Item I below, which item has been substantially prepared by SIPC. On January 31, 2013, SIPC filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing

[1] 15 U.S.C. 78ccc(e)(2)(A).

[2] Amendment No. 1 is a partial amendment which modifies the initial proposed changes to

this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. SIPC'S Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SIPC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified above. SIPC has prepared the following summary of the purpose of and statutory basis for the proposed rule change.[3]

SIPC Rule 400, 17 CFR 300.400 (''Rule 400'' or ''the Rule''), was enacted to provide clarity in the treatment of customer claims based on ''Standardized Options'' positions, in the liquidation of broker-dealers under SIPA. Currently, Rule 400 generally provides for the closeout of open Standardized Options positions upon the commencement of a SIPA liquidation. Based upon the amounts realized upon closeout, the trustee calculates the value of customers' Standardized Options positions, and credits or debits customers' accounts by the appropriate amounts. The purpose of the proposed rule change is to amend SIPC Rule 400 in the following respects: (1) To provide trustees appointed under SIPA with greater flexibility in the distribution of Standardized Options upon the commencement of a SIPA liquidation proceeding; and (2) to modify the definition of Standardized Options under Rule 400(h), to include an option that is a ''security'' under SIPA and is issued by an SEC-registered securities clearing agency or a foreign securities clearing agency, *i.e.,* an over-the-counter option (''OTC Option''). The proposed amendments create an alternative to closeout by allowing the SIPA trustee, with SIPC's consent, to transfer some or all of such Standardized Options positions to another SIPC member for the accounts of customers.

Under SIPC Rule 400(h), ''Standardized Options'' means options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange. The proposed amendments also would modify the definition of ''Standardized Options'' to include any other option that is a ''security'' under section 16(14) of SIPA and is issued by a registered securities clearing agency or foreign securities clearing agency.[4] For example, the Options Clearing Corporation (''OCC'') proposed, and the Commission approved, a rule change to establish a legal and operational framework for OCC to provide central clearing for OTC Options.[5] If OCC clears OTC Options, these options will be deemed ''Standardized Options'' and subject to closeout or transfer in a SIPA proceeding.

In light of experience and knowledge gained from the liquidation of Lehman Brothers Inc. (''Lehman'') and other SIPA proceedings, SIPC has determined that allowing SIPA trustees the flexibility, subject to SIPC approval, of transferring customers' options positions or of liquidating their positions, would be beneficial to the investing public and consistent with the customer protection purposes of SIPA. Moreover, because the OTC Options are similar to exchange-traded index options, and generally would be cleared by a securities clearing agency registered under Section 17A of the Exchange Act subject to the same basic rules and procedures used for the clearance of index options, there appears to be no practical basis to treat OTC Options differently under SIPA. Indeed, modifying the definition of ''Standardized Options'' under Rule 400(h) to include OTC Options would update, and therefore enhance, the protections afforded customers in the event of a liquidation of their broker-dealer.

A. Past Experience

The ability to transfer Standardized Options positions to another brokerage in lieu of an automatic closeout gives SIPA trustees more flexibility in distributing such customer assets after the commencement of a SIPA liquidation proceeding, and more closely approximates what the customer would expect to be in his account but for the failure of the broker-dealer. This is particularly true where the trustee, as in the Lehman case, was able promptly to effectuate bulk transfers of customer accounts to other brokerages enabling customers to re-gain access to their accounts in the form in which the accounts existed pre-liquidation, with comparatively minimal disruption. In such instances, customers generally are better served by having their options positions transferred with their other securities to their accounts at their new broker-dealer. The proposed amendments would provide clear authority for a SIPA trustee to transfer the Standardized Options positions, with SIPC's consent. This greater flexibility in the treatment of open positions would enhance customer protection under exigent circumstances, and potentially avoid exacerbating the turmoil or harm to customers and/or the markets that could be caused by the forced liquidation of open positions.

B. OTC Options

In view of the potential clearing of OTC Options, modifying the definition of Standardized Options to include such options is appropriate and in keeping with the customer protection functions of SIPA. OTC Options will be ''securities'' for purposes of both the Securities Act of 1933 and the Exchange Act. They also will be a ''security'' under section 16(14) of SIPA, 15 U.S.C. 78lll(14), which provides that that the term ''security'' means ''any put, call, straddle, *option,* or privilege on any security, *or group or index of securities*'' (emphasis added).

In a SIPA liquidation, customers would be protected against the loss of their OTC Options custodied with the SIPC member broker-dealer. Section 16(2) of SIPA, 15 U.S.C. 78lll(2), provides that ''[t]he term 'customer' of a debtor means any person . . . who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of business. . . .'' OTC Options will be created in the customers' account and held there by the clearing member for the benefit of its customers in the same way that Standardized Options are held. A clearing agency will be the issuer of those options in precisely the same way that it is the issuer of listed options. Thus, the OTC Options created in the omnibus customers' account of a clearing member at a clearing agency would be ''received, acquired, or held'' by the customer's broker-dealer in the ordinary course of business.

For example, OTC Options at OCC will be carried in a clearing member's

subsection (h) of Rule 400, by inserting the phrase ''a 'security' under section 16(14) of the Act and is'' prior to the words ''issued by a securities clearing agency. . . .''

[3] The Commission has modified the language in this section.

[4] Existing Rule 400 applies to options traded on foreign securities exchanges as well as U.S. exchanges. For consistency, amended Rule 400 will apply to OTC options issued by foreign securities clearing agencies as well as U.S.-registered clearing agencies.

[5] *See* Securities Exchange Act Release No. 67835 (Sept. 12, 2012), 77 FR 57602 (Sept. 18, 2012), (SR–OCC–2012–14); *see also* Securities Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (approving proposed rule change). OCC also filed, and received accelerated approval of, a proposed rule change to reflect enhancements in its system for theoretical analysis and numerical simulations as applied to longer-tenor options. Securities Exchange Act Release No. 70719 (Oct. 18, 2013), 78 FR 63548 (Oct. 24, 2013), (SR–OCC–2013–16).

clearing accounts. Proprietary positions will be carried in the clearing member's firm account, and customer positions in its securities customers' account. Positions in OTC Options will be margined at OCC in the omnibus customers' account on the same basis as listed options. If a clearing member takes the other side of a transaction with its customer in an OTC Option, the transaction will result in the creation of a long or short position (as applicable) in the omnibus customers' account and in the opposite position in the clearing member's firm account.

OCC indicates that it expects to clear the OTC Options subject to the same basic rules and procedures used for the clearance of index options. OCC will require that the transactions be cleared through a clearing member of OCC that is registered with the SEC as a broker-dealer, or one of the small number of clearing members that are ''non-U.S. securities firms'' as defined in OCC's By-Laws. Further, the OTC Options that OCC will clear will be options on the S&P 500 Index.[6] The OTC Options will be similar to exchange-traded index options called ''FLEX Options'' that currently are traded on the Chicago Board Options Exchange. While the OTC Options will allow for customization of certain terms, such as the type of option, exercise price, and expiration date, OTC Options will not be exchange traded. Rather, they will be bilateral trades that will be submitted to OCC for clearance.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate of not more than ninety days after such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission shall:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether such proposed rule change should be disapproved.

To allow public access to SIPC's rules, SIPC rules that are approved by the Commission are published under Part 300 of 17 CFR Chapter II.

[6] OCC is licensed by S&P to clear options on the S&P MidCap 400 Index and the S&P Small Cap 600 Index, and in the future, OCC may decide to clear OTC Options on other indices, or on individual equity securities.

III. Statutory Authority

Pursuant to SIPA, 15 U.S.C. 78aaa *et seq.,* and particularly, section 3(e) (15 U.S.C. 78ccc(e)), SIPC proposes to amend 300.400 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 300

Brokers, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 15 U.S.C. 78ccc.

■ 2. Section 300.400 is amended by:

■ a. In paragraph (b), adding the phrase ''except to the extent that the trustee, with SIPC's consent, or SIPC as trustee, as the case may be, has arranged or is able promptly to arrange, a transfer of some or all of such positions to another SIPC member'' after the phrase ''accounts of customers'';

■ b. In paragraph (e), adding the phrase ''except to the extent that such positions have been transferred as provided in paragraph (b) of this section'' after the phrase ''section 7(b)(1) of the Act''; and

■ c. In paragraph (h), adding the phrase '', and any other option that is a security under section 16(14) of the Act, 15 U.S.C. 78lll(14), and is issued by a securities clearing agency registered under Section 17A of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1, or a foreign securities clearing agency'' after the phrase ''foreign securities exchange''.

Dated: October 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority in 17 CFR 200.30–3(f)(3).

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26165 Filed 11–4–13; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0779; FRL–9902–34-Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio: Bellefontaine; Determination of Attainment for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 19, 2013, the Ohio Environmental Protection Agency, submitted a request to EPA to make a determination under the Clean Air Act that the Bellefontaine nonattainment area has attained the 2008 lead (Pb) national ambient air quality standard (NAAQS). In this action, EPA is proposing to determine that the Bellefontaine nonattainment area (area) has attained the 2008 Pb NAAQS. This determination of attainment is based upon complete, quality-assured and certified ambient air monitoring data for the 2010–2012 design period showing that the area has monitored attainment of the 2008 Pb NAAQS. As a result of this determination, the requirements for the area to submit an attainment demonstration, together with reasonably available control measures, a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines will be suspended as long as the area continues to attain the 2008 Pb NAAQS.

DATES: Comments must be received on or before December 5, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0779, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed

information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving Ohio's state implementation plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: October 21, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–26357 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R08–OAR–2013–0330, FRL–9902–46–Region 8]

Approval of North Dakota Request for Partial Delegation of Prevention of Accidental Release, Clean Air Act Section 112(r) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under Clean Air Act (CAA) Section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. On September 13, 2012, the State of North Dakota, Department of Agriculture (NDDA), requested partial delegation of the CAA section 112(r)(7) Risk Management Program (RM Program) for agricultural anhydrous ammonia facilities. The September 13, 2012 request was supplemented by the NDAA on February 26, 2013, and April 11, 2013. EPA has preliminarily determined that NDDA's request meets CAA requirements for partial delegation, and EPA is proposing to approve the request.

DATES: Comments must be received on or before December 5, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2013–0330, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Truskowski.brent@epa.gov.*
- *Fax:* (303) 312–7203 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Brent Truskowski, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8EPR–ER, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Brent Truskowski, Acting RMP Coordinator, Emergency Response and Preparedness Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8EPR–ER, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2014–0330. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an anonymous access system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Preparedness Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brent Truskowski, Acting RMP

Coordinator, Emergency Response and Preparedness Program, Mailcode 8EPR–ER, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–6235, *truskowski.brent@epa.gov.*

SUPPLEMENTARY INFORMATION:

Information is organized as follows:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The word and initials RM Program means Risk Management Program.

(iii) The initials NDDA mean North Dakota Department of Agriculture.

(iv) The initials RMP mean Risk Management Plan.

(v) The initials CFR mean Code of Federal Regulations.

(vi) The initials FR mean Federal Register.

(vii) The initials CAS mean Chemical Abstract Service.

(viii) The initials NDCC mean North Dakota Century Code.

(ix) The initials NDAC mean North Dakota Administrative Code.

(x) The initials MOU mean Memorandum of Understanding.

Table of Contents

I. What action is EPA proposing in today's notice?

On June 20, 1996, EPA promulgated Risk Management Program (RM Program) regulations (40 CFR part 68) which were mandated under the accidental release prevention provisions of section 112(r)(7) of the CAA. 61 FR 31668. These regulations require owners and operators of stationary sources subject to the regulations to submit risk management plans (RMPs) to a central location specified by EPA. These regulations also encourage sources to reduce the probability of accidentally releasing substances that have the potential to cause harm to public health and the environment, and stimulate dialogue between industry and the public to improve accident prevention and emergency response practices.

The North Dakota Department of Agriculture (NDAA) has requested partial delegation of the RM Program for facilities with an anhydrous ammonia storage capacity of ten thousand pounds or more that is intended to be used as fertilizer or in the manufacturing of a fertilizer (''agricultural anhydrous ammonia facilities''). EPA is proposing to approve this request and to partially delegate the RM Program for agricultural anhydrous ammonia facilities to the State of North Dakota. EPA would retain authority for the RM Program for all other regulated chemicals which may be present at these facilities. *See* 40 CFR 68.130.

After a thorough review of North Dakota's partial delegation request, and the pertinent statutes and regulations, Region 8 proposes to find that such a delegation is appropriate in that North Dakota has satisfied the criteria in 40 CFR 63.91 and 63.95 by demonstrating it has adequate and effective authorities, resources, and procedures in place for implementation and enforcement of agricultural anhydrous ammonia facilities subject to the RM Program. If approved, North Dakota will have the primary authority and responsibility to carry out elements of the RM Program for agricultural anhydrous ammonia facilities within the State, including on-site inspections, recordkeeping reviews, audits, compliance assistance and outreach, and non-criminal enforcement. EPA will retain authority for implementing the RM Program for all other chemicals at these facilities, and for the RM Program generally in North Dakota for all other facilities.

II. Background

A. Risk Management Program Background

On January 31, 1994 (59 FR 4493), EPA promulgated (along with various other provisions) the ''List of Regulated Substances and Thresholds for Accidental Release Prevention and Risk Management Programs for Chemical Accident Release Prevention.'' *See* 40 CFR 68.130. The list, known as Tables 1 to 4 in section 68.130, sets forth the list of regulated substances and thresholds under CAA Section 112(r). Anhydrous ammonia is a regulated substance under section 112(r) based on a mandate from Congress and its subsequent inclusion on the list in Tables 1 and 2 in section 68.130. Tables 1 and 2 are identical lists of toxic chemicals arranged alphabetically in Table 1 and by Chemical Abstract Service (CAS) number in Table 2.

Part 68 also sets forth the requirements for owners or operators of stationary sources concerning the prevention of accidental releases. The regulations address the safe design, operation, and maintenance of covered processes and emergency response to accidental releases that may occur. The regulations also include requirements for the development and submission of RMPs by regulated sources. The RMP is required to include information about the regulated stationary source and about the source's hazard assessment, prevention program, and emergency response program.

B. Delegation of Section 112 Programs

Section 112(l) of the CAA and 40 CFR part 63, subpart E authorize EPA to approve state rules and programs to be implemented and enforced in place of certain CAA requirements, including the RM Program set forth at 40 CFR part 68. EPA promulgated 40 CFR part 63, subpart E on November 26, 1993 (58 FR 62262) and subsequently amended these regulations on September 14, 2000 (65 FR 55810).

Under 40 CFR 63.91(a), a state must satisfy requirements under 40 CFR 63.91(d) to obtain delegation of a section 112 program. If the state adopts federal rules unchanged, then only the criteria in 40 CFR 63.91(d) are required, except for delegation of the RM Program for which the provisions of 40 CFR 63.95 must also be met. *See* 40 CFR 63.91(a)(1) and (a)(4).

Under 40 CFR 63.91(d), the state may either reference approval of a Title V program or directly satisfy the requirements in (d)(3)(i)–(v). These requirements include:

- A written finding by the State Attorney General that the state has the necessary legal authority to implement and enforce the program and to assure compliance;
- Copies of the state's statutes and regulations granting authority to implement the program;
- A demonstration that the state has adequate resources to implement and enforce the program;
- A schedule demonstrating expeditious implementation of the program; and
- A plan that assures expeditious compliance, including a complete description of the state's compliance tracking and enforcement program.

If a State's legal authorities substantially meet the requirements above (set out in detail in 40 CFR 63.91(d)(3)(i)), but are not fully approvable, EPA may grant partial approval with the State's consent and the EPA will continue to implement those authorities that are not approved. *See* 40 CFR 63.91(f).

Under 40 CFR 63.95(b), the State's part 68 program shall contain the following elements, consistent with the procedures in § 63.91, for at least the

chemicals listed in 40 CFR part 68, subpart F, that an approvable State Accidental Release Prevention program is regulating:

- A demonstration of the state's authority and resources to implement and enforce regulations that are no less stringent than the regulations of 40 CFR part 68, subparts A through G and 40 CFR 68.200; and
- A requirement that any source subject to the State's part 68 program submit a RMP that reports at least the same information in the same format as required under part 68, subpart G; [1]
- Procedures for reviewing RMPs and providing technical assistance to stationary sources including small businesses.
- A demonstration of the State's authority to enforce all part 68 requirements must be made, including an auditing strategy that complies with section 68.220.

For a program that covers all of the federally-listed chemicals (a ''complete program'') or a program covering less than all of the federally–listed chemicals (a ''partial program'') the State must take delegation of the full part 68 program for the federally-listed chemicals it regulates.

C. North Dakota's Request for Delegation

In late 2009 and early 2010, NDDA initiated conversations with EPA Region 8 regarding the procedure for receiving partial delegation of the RM Program for agricultural anhydrous ammonia facilities. EPA provided NDDA information regarding the delegation process through various email correspondence, phone conversations and meetings. On February 17, 2011, EPA Region 8 sent NDDA a letter formally recognizing NDDA's interest in receiving partial delegation of the RM program, and describing the basic requirements for the NDDA to request and receive partial delegation of the RM Program.

NDDA has in place a program for regulation of certain aspects of anhydrous ammonia facilities, but this program does not address RM Program requirements. North Dakota Century Code (NDCC) 19–20.2 provides general authority for NDDA to license and regulate anhydrous ammonia facilities with a capacity exceeding six thousand gallons. NDCC 19–20.2 contains engineering requirements for tanks, valve fittings, and other equipment to ensure that tanks and appurtenances are structurally sound and properly maintained. NDCC 19–20.2 also includes siting requirements that specify minimum distances between anhydrous ammonia storage tanks and adjoining property lines, residences, places of public assembly, and institutional residences. NDCC 19–20.2 also provides NDDA authority to enter any public or private premises to inspect equipment and respond to complaints. If violations are found, NDCC 19–20.2 allows NDDA to issue cease and desist orders, revoke or suspend facility licenses, and issue civil penalties.

On April 18, 2011, the North Dakota Legislative Assembly enacted House Bill 1321, which created NDCC 19–20.3. NDCC 19–20.3 was enacted in anticipation of NDDA requesting and assuming partial delegation for the RM Program for agricultural anhydrous ammonia facilities. NDCC 19–20.3 became effective April 1, 2013. NDCC 19–20.3–01 gives the Agriculture Commissioner authority to determine compliance with the RM Program requirements set forth in 40 CFR part 68 by providing the Commissioner authority to:

1. Request information from any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.
2. Conduct inspections of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.
3. Obtain and review RMPs required under 40 CFR part 68, and other records applicable to any person that sells, stores, or handles anhydrous ammonia for agricultural purposes, and is required to comply with the risk management program requirements.

NDCC 19–20.3 also provides the Agriculture Commissioner with enforcement authority when RM Program violations are identified. Specifically, NDCC 19–20.3–02 states that the Commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

On September 13, 2012, NDDA submitted to EPA a request to receive partial delegation of authority to implement and enforce the RM Program. This request included the following documents (which are included in the docket for this action):

- A summary of the State's anhydrous ammonia regulatory authority and general components of a proposed RMP enforcement program;
- A copy of NDCC 19–20.2;
- A copy of NDCC 19–20.3;
- A letter from the North Dakota Attorney General asserting authority of the Agriculture Commissioner to enforce the RM Program;
- A proposed Memorandum of Understanding (MOU) between NDDA and the EPA;
- A proposed RMP enforcement response policy;
- A proposed administrative rule for incorporating by reference 40 CFR part 68 into North Dakota's regulations (NDAC 7–12–03).

EPA reviewed the information provided with the request for partial delegation, and requested further information in December 2012. In addition, EPA responded to NDDA's request on December 13, 2012, acknowledging the receipt of the request for partial delegation, and describing the steps required by EPA to delegate the RM Program to NDDA.

On February 26, 2013, NDDA submitted further information in response to EPA's request. The response provided EPA with a revised letter from the Attorney General addressing specific questions and concerns raised by EPA and a revised summary of North Dakota's regulatory authority and general components of the proposed enforcement program. The response indicated that North Dakota was amending a portion of its previous request and excluding the criminal enforcement authority required under 40 CFR 70.11(a)(3)(ii) and (iii) from its partial delegation request. The response discussed the status of North Dakota's rulemaking process to incorporate the RM Program into its regulations. The response also described how the requirements of 40 CFR 63.95(b)(3) and (b)(4) would be met, as well as a description of how EPA concerns regarding the proposed MOU were met.[2]

[1] Under 40 CFR 63.95(b)(2), a State's RM Program may require reporting of information not required by the Federal program, and these requirements (like any other additional State requirements) will become federally enforceable upon approval. In this case, NDDA has directly adopted by reference the Federal program in part 68, including the reporting requirements of subpart G.

[2] The MOU between EPA and the NDDA, while not a delegation requirement, is intended to ensure regular communication between the two Agencies to ensure effective enforcement of the RM program by NDDA. The purposes of the MOU are to promote the identification and coordination of the section 112(r)(7) RM Program compliance and enforcement activities pertaining to agricultural bulk anhydrous ammonia facilities, to describe both parties' mutual understanding of compliance responsibilities, and to avoid replication and duplication of efforts while discharging the parties' respective duties. By

Continued

On April 1, 2013, North Dakota incorporated by reference into its regulations the provisions of 40 CFR part 68 [3] as published on June 30, 2011, with only one adjustment. *See* NDAC 7–12–03. This adjustment clarifies North Dakota is incorporating 40 CFR part 68 only insofar as it applies to agricultural anhydrous ammonia facilities. NDAC 7–12–03–02.

EPA reviewed the additional information provided by North Dakota and requested additional information on proposed enforcement tracking. On April 18, 2013, NDDA provided EPA with a ''Revised Summary of North Dakota's Anhydrous Ammonia Regulatory Authority and General Components of a Proposed RMP Enforcement Program.'' On June 3, 2013, EPA Region 8 determined that the delegation package was complete, and sent NDDA a letter confirming the determination.

III. EPA's Analysis of NDDA's Submittal

Based on NDDA's partial delegation request, and applicable laws and regulations, EPA is proposing to approve the request as it appears NDDA has satisfied the relevant criteria of 40 CFR 63.91 and 63.95. EPA is treating NDDA's request as a request for straight partial delegation under 40 CFR 63.91(a)(1), (4) and (f), since North Dakota has incorporated by reference the RM Program in 40 CFR part 68 as described above.

In accordance with 40 CFR 63.91(d)(3)(i), the North Dakota Assistant Attorney General submitted a written finding of NDDA's authority to implement and enforce the RM Program for agricultural anhydrous ammonia facilities.[4] The Assistant Attorney General supplemented this finding to clarify that the NDDA does not have the criminal enforcement authority specified in section 70.11(a)(3)(ii) and (iii). As a result, North Dakota has not requested delegation of that criminal enforcement authority. With respect to the remaining requirements, North Dakota demonstrated the appropriate authority for section 70.11(a)(1) (ability to enjoin activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment), section 70.11(a)(2) (ability to enjoin violation of any program requirement), and section 70.11(a)(3)(i) (ability to assess civil penalties up to $10,000 per day of violation).

The Assistant Attorney General also determined that NDDA had adequate authority to assure compliance with the RM Program for sources subject to these provisions. As explained above, NDCC 19–20.3 provides NDDA with authority to request information from and conduct inspections of such sources, as required by 40 CFR 63.91(d)(3)(i)(B) and (C).

In accordance with 40 CFR 63.91(d)(3)(ii)-(v), NDDA submitted copies of the appropriate provisions of State statutes and regulations, documentation of adequate resources to implement and enforce the RM Program, and a schedule and plan to assure expeditious implementation and compliance by all sources, including a description of the State's compliance tracking and enforcement program (including inspection strategies). With respect to adequate resources and expeditious implementation, the NDDA currently has three employees devoted almost entirely to program implementation. With respect to expeditious compliance, NDDA already conducts inspections of anhydrous ammonia facilities once every five years to ensure compliance with NDCC 19–20.2. There are currently 368 licensed facilities in the State, which requires NDDA to inspect approximately 70 facilities each year. NDDA will conduct RM Program compliance inspections and audits while conducting inspections for the engineering requirements found in NDCC 19–20.2.[5]

In accordance with 40 CFR 63.95(b)(1), NDDA submitted information which demonstrates that it has the authority and resources to implement and enforce regulations that are no less stringent than the regulations in 40 CFR part 68, subparts A through G and section 68.200, and a requirement that subject sources submit a RMP that reports at least the same information in the same format to the same location as required under 40 CFR part 68, subpart G. As required by 40 CFR 63.95(b)(3)–(4), NDDA submitted documentation that it has adequate procedures for reviewing RMPs, providing technical assistance to stationary sources, including small businesses, and auditing RMPs in a manner consistent with 40 CFR 68.220. In particular, NDDA will review and audit RMPs as part of the inspections described above. The NDDA also anticipates providing technical assistance, including outreach and education, by conducting annual safety and compliance meetings with regulated persons as a tool to increase awareness of the RM Program requirements and improving compliance.

If this proposal is finalized, NDDA will have primary authority and responsibility to implement and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities. However, nothing shall preclude, limit, or interfere with the authority of EPA to exercise its outreach and compliance assistance, enforcement, investigatory, and information gathering authorities concerning this part of the Act. If EPA determines that NDDA's procedures for enforcing or implementing the 40 CFR part 63 or 40 CFR part 68 requirements are inadequate, or are not being effectively carried out, this delegation may be revoked in whole or in part in accordance with the procedures set forth in 40 CFR 63.96(b).

In addition, this delegation to NDDA will not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition,

November 30 of each year, North Dakota plans to provide EPA Region 8 with an end of year report that summarizes North Dakota's RM Program regulatory activities for the previous federal fiscal year. The report is expected to include information on the number of RM Program inspections conducted, number and types of violations identified, notable cases, description of the enforcement actions taken, number and description of RM Program compliance assistance activities, and other information related to RM Program enforcement. The MOU ensures ongoing communication regarding NDDA enforcement of the RM Program by NDDA providing EPA with an enforcement targeting scheme at the beginning of each federal fiscal year. The targeting scheme is expected to identify facilities scheduled for initial or follow-up inspection for the upcoming federal fiscal year and priority areas for regulation. NDDA will also notify EPA of accidents at regulated facilities that cause environmental damage, personal injury, property damage, or involve releases of 100 lbs or more. EPA and NDDA plan to share facility and chemical data base information, progress reports, and results of inspections to the extent that the information is not confidential.

[3] Consistent with 40 CFR 63.95(b), North Dakota did not incorporate the following sections into its regulations: 40 CFR 68.120 (Petition Process), 40 CFR 68.210 (Availability of Information to the Public), and 40 CFR 68.215 (Permit Content and Air Permitting Authority or Designated Agency Requirements).

[4] North Dakota originally relied on authority under NDCC 19–20.2 for its adoption of the RM Program. NDCC 19–20.2 defined anhydrous ammonia storage facility as a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons. 40 CFR 68.130 sets a threshold quantity for accidental release prevention at ten thousand pounds, or approximately one thousand nine hundred forty gallons. EPA discussed this gap in potential coverage with the State. The Attorney General's supplemental finding identified NDDA's general rulemaking authority along with the grant of authority under NDCC 19–20.3 as appropriate authority for adoption of the RM Program for agricultural anhydrous ammonia facilities with the appropriate threshold.

[5] As discussed above, NDCC 19–20.3 gives the Agriculture Commissioner the authority to conduct inspections and access records necessary to verify compliance with the RM Program. NDCC 19–20.3 also provides the legal authority for the NDDA to access, review and audit RMPs from regulated persons.

EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the RM Program in Indian country because NDDA has not demonstrated authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

IV. Proposed Action

EPA proposes approving NDDA's request for partial delegation of authority to implement and enforce (with the exception of criminal enforcement) the RM Program for agricultural anhydrous ammonia facilities. NDDA has incorporated by reference Federal requirements set forth in 40 CFR part 68 in NDAC 7–12–03 and regulates agricultural anhydrous ammonia facilities through this authority as well as its authority in NDCC 19–20.2 and 19–20.3. This partial delegation will extend to agricultural anhydrous ammonia facilities which are sources subject to the accidental release prevention regulations in 40 CFR part 68, with the exception of sources in Indian country.

V. Statutory and Executive Order Reviews

Under the CAA, the Regional Administrator is authorized to approve program delegation when that program complies with the provisions of the Clean Air Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing delegation requests, EPA's role is to review and approve state programs provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves a state program and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the State program is not approved to regulate in Indian country located in North Dakota, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 63

Environmental protection, Risk management program, Air pollution control, Hazardous substances, Chemicals, Intergovernmental relations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 22, 2013.

Shaun L. McGrath,

Regional Administrator, U.S. EPA Region 8.

[FR Doc. 2013–26356 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9902–28-Region 4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Geiger (C&M Oil) Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Geiger (C&M Oil) Superfund Site (Site) located in Hollywood, Charleston County, South Carolina, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of South Carolina, through the South Carolina Department of Health and Environmental Control, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews (include if applicable), have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by December 5, 2013.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: Joyner.William@EPA.gov* and or *Miller.Angela@EPA.gov*.
- *Fax:* (404) 562–8788.
- *Mail:* William Joyner, Remedial Project Manager, Superfund Remedial Section A, Superfund Remedial Branch Superfund Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2005–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is

an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at: Regional Site Information Repository, U.S. EPA Record Center, Attn: Ms. Anita Davis, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

Hours of Operation (by appointment only): 8:30 a.m. to 4:00 p.m., Monday through Friday. St. Paul's Parish Library, 5151 Town Council Drive, Hollywood, SC 29449.

Hours of Operation: Monday, Tuesday and Wednesday from 10:00 a.m. to 6:00 p.m.; Thursday from 12:00 p.m. to 8:00 p.m.; and Saturday from 10:00 a.m. to 2:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Joyner, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, GA 30303–8960, (404) 562–8795, email: *Joyner.William@EPA.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Geiger (C&M Oil) Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 23, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–26513 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 173, 174, 178, 179, and 180

[Docket No. PHMSA–2012–0082 (HM–251)]

RIN 2137–AE91

Hazardous Materials: Rail Petitions and Recommendations To Improve the Safety of Railroad Tank Car Transportation (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM), extension of comment period.

SUMMARY: PHMSA is notifying the public of our intent to extend the comment period by 30 days for a notice of proposed rulemaking published on September 6, 2013.

DATES: The comment period for the ANPRM closing on November 5, 2013 is extended until December 5, 2013. To the extent possible, PHMSA will consider late-filed comments during the next stage of the rulemaking process.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2012–0082) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Karl Alexy, (202) 493–6245, Office of Safety Assurance and Compliance, Federal Railroad Administration or Ben Supko, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, US Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On September 6, 2013, PHMSA published a notice of proposed rulemaking (ANPRM; 78 FR 54849) seeking public comments on whether issues raised in eight petitions and four NTSB recommendations would enhance safety, revise, and clarify the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) with regard to rail transport. Specifically, we requested comments on important amendments that would: (1) Enhance the standards

for DOT Specification 111 tank cars used to transport Packing Group I and II hazardous materials; (2) explore the feasibility of additional operational requirements to enhance the safe transportation of Packing Group I and II hazardous materials; (3) afford DOT greater discretion to authorize the movement of non-conforming tank cars; (4) correct regulations that allow an unsafe condition associated with pressure relief valves (PRV) on rail cars transporting carbon dioxide, refrigerated liquid; (5) revise outdated regulations applicable to the repair and maintenance of DOT Specification 110, DOT Specification 106, and ICC 27 tank car tanks (ton tanks); and (6) except rupture discs from removal if the inspection itself would damage, change, or alter the intended operation of the device.

II. Comment Period Extension

We received a request to extend the comment period by 90-days from the Sierra Club on behalf of Climate Parents, Columbia Riverkeeper, ForestEthics, Friends of Earth, Natural Resources Defense Council, Oil Change International, San Francisco Baykeeper, Spokane Riverkeeper, Washington Environmental Council, and the Waterkeeper Alliance. The request indicates that the primary basis for extension is to allow the public a meaningful review of these proposed changes in rail safety, especially regarding tank cars transporting crude oil and tar sands while highlighting several recent tank car incidents. The request also indicates that the recent government shutdown prevented communication with DOT staff for review of the technical proposals during the initial 60-day comment period.

Although PHMSA normally considers an initial 60-day comment period sufficient time to review and respond to rulemaking proposals, due to PHMSA's desire to collect meaningful input from a number of potentially affected stakeholders, PHMSA is consenting to the commenter request to extend the comment period to ensure sufficient time for public review. However, we do not consider a 90-day extension to be warranted. Accordingly, in the interest of moving this rulemaking action forward in a timely manner, we believe, extending the comment period by 30 days would allow sufficient to time to conduct a thorough review.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

Issued in Washington, DC, on October 30, 2013 under authority delegated in 49 CFR 1.97.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2013–26402 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–BC09

Atlantic Highly Migratory Species (HMS); 2006 Consolidated Highly Migratory Species Fishery Management Plan; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of rescheduled public hearings.

SUMMARY: On August 22, 2013, NMFS published a notice of public hearings for Draft Amendment 7 to the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (2006 Consolidated HMS FMP), which provided dates and locations for ten scheduled public hearings. Three of the ten scheduled public hearings were cancelled due to the shut-down of the Federal Government from October 1 through 16, 2013. In this document, NMFS announces the dates and locations for three rescheduled public hearings to provide opportunities for members of the public to comment on the management measures proposed in Draft Amendment 7. The Amendment 7 proposed rule, which published August 21, 2013, includes a variety of management measures to ensure sustainable management of bluefin tuna consistent with the 2006 Consolidated HMS FMP and address ongoing management challenges in the Atlantic bluefin tuna fisheries.

DATES: The rescheduled public hearings will be held on November 12 and 13, and December 3, 2013. Written comments will be accepted until December 10, 2013. See **SUPPLEMENTARY INFORMATION** for specific meeting dates, times, and locations.

ADDRESSES: The rescheduled public hearings will be held in Florida, and New Jersey. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2013–0101,'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0101,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Do not submit electronic comments to individual NMFS staff.
- *Mail:* Submit written comments to Thomas Warren, Highly Migratory Species Management Division, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. Please mark the outside of the envelope ''Comments on Amendment 7 to the HMS FMP.''
- *Fax:* 978–281–9340; Attn: Thomas Warren.
- *Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word or Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Thomas Warren or Brad McHale at 978–281–9260; Craig Cockrell or Jennifer Cudney at 301–427–8503.

SUPPLEMENTARY INFORMATION: The North Atlantic tuna fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the

Atlantic Tunas Convention Act (ATCA). Under the Magnuson-Stevens Act, NMFS must manage fisheries to maintain optimum yield on a continuing basis while preventing overfishing. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS. Management of these species is described in the 2006 Consolidated HMS FMP, which is implemented by regulations at 50 CFR part 635. Copies of the 2006 Consolidated HMS FMP and previous amendments are available from NMFS on request (see **FOR FURTHER INFORMATION CONTACT**).

On August 21, 2013 (78 FR 52032) NMFS published proposed regulations to implement Amendment 7 to the 2006 Consolidated HMSFMP to control bluefin landings and dead discards in the pelagic longline fishery, enhance reporting in all categories, and ensure U.S. compliance with the ICCAT-recommend quota. As described in the proposed rule, the proposed management measures include: (1) Allocation measures that would make modifications to how the U.S. bluefin quota is allocated among the quota categories; (2) Area Based measures that would implement restrictions on the use of pelagic longline gear in various time and area combinations, modify gear restrictions, or provide conditional access to current pelagic longline closed areas; (3) Bluefin Quota Controls that would strictly limit the total catch (landings and dead discards) of bluefin in the Longline category using different strategies; (4) Enhance Reporting measures that would implement a variety of new bluefin reporting requirements; and (5) Other Measures that would make modifications to the rules that control how the various quota categories utilize quota, and implement a northern albacore tuna quota. Although the Amendment 7 proposed rule set the end of the comment period to October 23, 2013, NMFS subsequently extended the end of the comment period to December 10, 2013, in order to provide additional time for the public to consider the proposed rule, given its length and complexity, and in light of any potential new recommendations adopted by ICCAT at its November 2013 meeting (78 FR 57340; September 18, 2013).

Status of Public Hearings and Request for Comments: Seven public hearings have been held to date: San Antonio, TX; Gloucester, MA; Manteo, NC; Charleston, SC; Belle Chasse, LA; Portland, ME; and Panama City, FL. NMFS also conducted consultations with the New England Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the South Atlantic Fishery Management Council. The public hearings that were scheduled in Fort Pierce, FL; St. Petersburg, FL; and Toms River, NJ; for October 1, 2, and 8, respectively; and the scheduled consultation with the Mid-Atlantic Fishery Management Council on October 7, were cancelled due to the Federal Government shut-down from October 1 through 16, 2013. The public hearings in Fort Pierce, FL; St. Petersburg, FL; and Toms River, NJ have been rescheduled for November 12, and 13, and December 3, 2013, respectively, to provide the opportunity for public comment on potential management measures. See Table 1 for dates, times and locations of the rescheduled public hearings.

TABLE 1—DATES, TIMES AND LOCATIONS OF RESCHEDULED PUBLIC HEARINGS

Venue	Date/time	Meeting locations	Location contact information
Public Hearing	November 12, 2013, 6 p.m.–10 p.m.	Fort Pierce, FL	Days Inn Fort Pierce, 3224 U.S. 1, Fort Pierce, FL 34982, (772) 465–7000.
Public Hearing	November 13, 2013, 6 p.m.–10 p.m.	St. Petersburg, FL	National Marine Fisheries Service, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, Florida 33701, (727) 824–5301.
Public Hearing	December 3, 2013, 6 p.m.–10 p.m.	Toms River, NJ	Ocean County, Public Administration Building, Freeholders Meeting Room (119), 101 Hooper Ave., Toms River, NJ 08754, (732) 929–2147.

Public Hearing Code of Conduct

The public is reminded that NMFS expects participants at public hearings, council meetings, and phone conferences to conduct themselves appropriately. At the beginning of each meeting, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the meeting room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not will be asked to leave the meeting.

Authority: 16 U.S.C. 971 *et seq;* 16 U.S.C. 1801 *et seq.*

Dated: October 30, 2013.

Emily H. Menashes,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–26451 Filed 10–31–13; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 214
Tuesday, November 5, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0087]

Notice of Request for Extension of Approval of an Information Collection; Importation of French Beans and Runner Beans From Kenya Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of French beans and runner beans from Kenya into the United States.

DATES: We will consider all comments that we receive on or before January 3, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0087-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0087, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0087* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of French beans and runner beans from Kenya, contact Mr. Dennis Martin, Trade Director, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2033. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of French Beans and Runner Beans From Kenya Into the United States.

OMB Number: 0579–0373.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain fruits and vegetables in accordance with the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–61).

Section 319.56–54 provides the requirements for the importation of French beans (*Phaseolus vulgaris* L.) and runner beans (*Phaseolus coccineus* L.) from Kenya into the United States. These commodities may be imported into the United States under certain conditions to prevent the introduction of plant pests into the United States. The regulations require information collection activities, including packinghouse registration, box labeling, and a phytosanitary certificate attesting that the conditions in § 319.56–54 have been met and that each consignment has been inspected and found free of certain pests.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0 hour per response.

Respondents: Importers of French beans and runner beans and the national plant protection organization of Kenya.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 1.5.

Estimated annual number of responses: 3.

Estimated total annual burden on respondents: 3 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of October 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–26448 Filed 11–4–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2013]

Foreign-Trade Zone 196—Fort Worth, Texas, Authorization of Production Activity, Flextronics International USA, Inc. (Mobile Phone Assembly and Kitting), Fort Worth, Texas

On June 14, 2013, Flextronics International USA, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 196—Site 2, in Fort Worth, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 37785, 6–24–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: October 31, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–26511 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–92–2013]

Foreign-Trade Zone (FTZ) 235—Lakewood, New Jersey, Notification of Proposed Production Activity, Cosmetic Essence Innovations, LLC, (Fragrance Bottling), Holmdel, New Jersey

Cosmetic Essence Innovations, LLC (CEI) submitted a notification of proposed production activity to the FTZ Board for its facility in Holmdel, New Jersey within FTZ 235. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 30, 2013.

CEI already has authority to bottle fragrances within Site 8 of FTZ 235. The current request would add foreign status components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt CEI from customs duty payments on the foreign status components used in export production. On its domestic sales, CEI would be able to choose the duty rate during customs entry procedures that applies to bottles of fragrances (duty-free) for the foreign status inputs noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: metal collars, plastic collars and metal caps or lids (duty rate ranges from 2.5 to 5.3%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 16, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 10, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–26514 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its *Preliminary Results* of the third administrative review of the antidumping duty order on certain steel threaded rod from the People's Republic of China (''PRC'') on April 9, 2013.[1] The period of review (''POR'') is April 1, 2011, through March 31, 2012. We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments received, we made changes to the margin calculations for these final results. The final dumping margins are listed below in the ''Final Results of the Review'' section of this notice.

DATES: *Effective Date:* November 5, 2013.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1394 or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2013, the Department published the *Preliminary Results* of this administrative review.[2] The Department conducted a verification of RMB Fasteners and IFI & Morgan Ltd. (collectively the ''RMB/IFI Group'') between April 22 and April 26, 2013.[3] The Department extended the deadline for submission of case briefs and rebuttal briefs based on requests from interested parties.[4] On May 17, 2013, and May 28, 2013, interested parties submitted surrogate value (''SV'') comments and SV rebuttal comments.[5]

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2011–2012,* 78 FR 21101 (April 9, 2013) (''*Preliminary Results*'').

[2] *See id.*

[3] *See* Memorandum to the File, from Julia Hancock, International Trade Compliance Analyst, Office 9, and Jerry Huang, International Trade Compliance Analyst, Office 9, ''Verification of the Sales and Factors of Production Responses of the RMB/IFI Group in the Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China,'' (May 31, 2013).

[4] *See* Memorandum for All Interested Parties, ''Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Revised Case and Rebuttal Briefs Schedule,'' (May 20, 2013); Memorandum for All Interested Parties, ''Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Second Revised Case and Rebuttal Briefs Schedule,'' (May 31, 2013); Memorandum for All Interested Parties, ''Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Third Revised Case and Rebuttal Briefs Schedule,'' (June 10, 2013); and Memorandum for All Interested Parties, ''Antidumping Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Fourth Revised Case and Rebuttal Briefs Schedule,'' (June 17, 2013).

[5] *See* ''Jiaxing Brother Fastener Co., Ltd., RMB Fasteners Ltd., and IFI & Morgan Ltd. (''RMB/IFI Group'')'s Surrogate Values for the Final Results: Certain Steel Threaded Rod from the People's

On May 21, 2013, May 28, 2013, and June 19, 2013, the Department issued letters regarding a claim by the RMB/IFI Group to withhold certain factual information from release under the administrative protective order (''APO''). Petitioner[6] submitted comments on that claim, and the RMB/IFI Group resubmitted that factual information for release under the APO.[7] On June 24, 2013, and July 1, 2013, Petitioner and the RMB/IFI Group submitted case briefs and rebuttal briefs.[8]

On July 9, 2013, the Department extended the deadline in this proceeding by 40 days.[9] On September 3, 2013, the Department extended the deadline in this proceeding by 20 days.[10] As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[11] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now October 23, 2013.

Scope of the Order

The merchandise covered by the order includes steel threaded rod. The subject merchandise is currently classifiable under subheading 7318.15.5051, 7318.15.5056,[12] 7318.15.5090, and 7318.15.2095 of the United States Harmonized Tariff Schedule (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.[13]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the Issues and Decision Memorandum, which is hereby adopted by this Notice. A list of the issues which parties raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Determination of No Reviewable Transactions

In the *Preliminary Results,* the Department determined that two companies had no shipments.[14] These companies either reported that they had no shipments of subject merchandise to the United States or the record evidence showed that they had no shipments during the POR. As we stated in the *Preliminary Results,* our examination of shipment data from U.S. Customs and Border Protection (''CBP'') confirmed that there were no reviewable transactions made by these companies during the POR.[15] Subsequent to the *Preliminary Results,* the Department did not receive any comments or information which indicated that these two companies made sales of subject merchandise to the United States during the POR. Therefore, consistent with the Department's refinement to its assessment practice in nonmarket economy (''NME'') cases, the Department finds that it is appropriate not to rescind the review in these circumstances, but, rather, to complete the review with respect to those two companies and issue appropriate instructions to CBP based on the final results of the review.[16]

Determination Not To Revoke Order in Part

We continue to find that the RMB/IFI Group has not satisfied the requirements of 19 CFR 351.222(b).[17] Thus, under section 751 of the Act, we determine not to revoke in part the order with respect to the RMB/IFI Group.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we have made certain revisions to the margin calculations for the RMB/IFI Group.[18]

Republic of China,'' (May 17, 2013); ''Vulcan Threaded Products Inc. (''Petitioner'')'s Surrogate Value Comments: Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China,'' (May 17, 2013); and ''Petitioner's Submission of Rebuttal Surrogate Value Information: Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China,'' (May 28, 2013).

[6] Vulcan Threaded Products Inc. (''Petitioner'').

[7] *See* Letter to RMB/IFI Group from Scot T. Fullerton, Program Manager, Office 9, ''Steel Threaded Rod from the People's Republic of China: Clear and Compelling Need to Withhold Business Proprietary Information,'' (May 21, 2013); Petitioner's Comments Concerning Respondents' Inappropriate Use of Double Bracketing: Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China, (May 28, 2013); Memorandum to James Doyle, Director, Office 9, from Evangeline Keenan, Director, APO/Dockets Unit, ''Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: Claim for Clear and Compelling Need to Withhold Information From Release Under Administrative Protective Order,'' (June 19, 2013); and RMB/IFI Group's Resubmit Confirmation of Public Availability of Financial Statements: Certain Steel Threaded Rod from the People's Republic of China, (June 19, 2013).

[8] *See* Petitioner's Case Brief (June 24, 2013); RMB/IFI Group's Case Brief (June 24, 2013); Petitioner's Rebuttal Brief (July 1, 2013); and RMB/IFI Group's Rebuttal Brief, (July 1, 2013).

[9] *See* Memorandum to Christian Marsh, ''Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' (July 9, 2013).

[10] See Memorandum to Gary Taverman, ''Certain Steel Threaded Rod from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' (September 3, 2013).

[11] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for the Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[12] HTSUS 7318.15.5056 was not listed in the scope for the *Preliminary Results* but should have been included in the scope. *See Certain Steel Threaded Rod from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 4389 (January 22, 2013).

[13] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009) (''*Order*''). For a full description of the scope of the *Order, see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Subject: Certain Steel Threaded Rod from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review (October 7, 2013) (''Issues and Decision Memorandum'').

[14] These companies are: 1) Certified Products International, Inc. (''CPI''), and 2) Jiangxi Xinyue Standard Part Co., Ltd. (''Jiaxing Xinyue''), collectively ''No Shipment Respondents.''

[15] *See Preliminary Results,* 78 FR at 21102.

[16] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*NME Antidumping Proceedings*'').

[17] *See* Issues and Decision Memorandum at Comment 8. The Department recently published a final rule amending this section of its regulations concerning the revocation of antidumping and countervailing duty orders in whole or in part, but that final rule does not apply to this administrative review. *See Modification to Regulation Concerning the Revocation of Antidumping and Countervailing Duty Order,* 77 FR 29875 (May 21, 2012). Reference to 19 CFR 351.222(b) thus refers to the Department's regulations in effect prior to June 20, 2012.

[18] *See* Issues and Decision Memorandum and the company-specific analysis memoranda. *See*

Continued

Separate Rates

In our *Preliminary Results,* we determined that the RMB/IFI Group and Zhejiang New Oriental Fastener Co., Ltd. (''Zhejiang New Oriental'') met the criteria for separate rate status.[19] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of this determination. Therefore, the Department continues to find that these companies meet the criteria for separate rate status.

Rate for Non-Selected Companies

Zhejiang New Oriental was not selected for individual review but, as explained above, meets the criteria for separate rate status. As in the *Preliminary Results,* we have assigned Zhejiang New Oriental the rate calculated for the mandatory respondent (*i.e.,* the RMB/IFI Group). The RMB IFI Group's rate is not zero, *de minimis,* or based entirely on facts available.[20] For the final results, we continue to find this approach to be consistent with section 735(c)(5) of the Act and the Department's practice.[21]

PRC-Wide Rate and PRC-Wide Entity

For the PRC-Wide Entity, the Department in the *Preliminary Results* assigned the rate of 206 percent, the only rate ever determined for the PRC-wide entity in this proceeding.[22] Because this rate is the same as the PRC-Wide rate from previous segments in this proceeding and nothing on the record of the instant review calls into question the reliability of the PRC-Wide rate, we find it appropriate to continue to apply the PRC-Wide rate of 206 percent.[23]

In the *Preliminary Results,* the Department determined that those companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC-Wide Entity.[24] Since the *Preliminary Results,* none of these companies submitted comments regarding these findings. Therefore, we continue to treat these companies as part of the PRC-Wide Entity.[25]

Additionally, in the *Preliminary Results,* for five companies,[26] the Department found that, while the request for review had been withdrawn, none of these five companies had a separate rate. Accordingly, these five companies remained part of the PRC-wide entity, which remained under review for the *Preliminary Results*.[27] Thus, the Department did not rescind the review for each of these five companies for the *Preliminary Results.* Since the *Preliminary Results,* no party has presented any information to the contrary and thus, these five companies remain part of the PRC-wide entity, which remains under review for the final results.

Final Results of the Review

The dumping margins for the POR are as follows:

Exporter	Weighted-average margin (percent)
(1) Jiaxing Brother Standard Part Co., Ltd., IFI & Morgan Ltd. and RMB Fasteners Ltd. (collectively ''RMB/IFI Group'')	19.54
(2) Zhejiang New Oriental Fastener Co., Ltd	*19.54

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually examined respondent whose weighted-average dumping margin is above de minimis (*i.e.,* 0.50 percent), the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of sales.[28] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For Zhejiang New Oriental Fastener Co., Ltd., the company receiving a separate rate that was not selected for individual review, we will assign an assessment rate based on the rate we calculated for the mandatory respondent whose rate was not *de minimis,* as discussed above. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, *see NME Antidumping Proceedings.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the RMB/IFI Group and Zhejiang New Oriental Fastener Co., Ltd., the cash deposit rate will be that established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate,

Memorandum to the File, ''Analysis for the Final Results of the Third Administrative Review of Certain Steel Threaded Rod from the People's Republic of China: RMB/IFI Group,'' (October 7, 2013).

[19] *See Preliminary Results,* 78 FR at 21101 and accompanying Decision Memorandum at 4–6.

[20] *See Preliminary Results,* and accompanying Decision Memorandum at 7. *See also Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855, 11859 (March 12, 2010).

[21] *See Preliminary Results,* 78 FR at 21101.

[22] *See Preliminary Results,* 78 FR at 21103, and accompanying Decision Memorandum at 7–8.

[23] *See STR Final Determination,* 74 FR at 8910.

[24] *See Preliminary Results,* 78 FR at 21102, and accompanying Decision Memorandum at 7–8.

[25] *See* Appendix II.

[26] On July 26, 2012, Vulcan Threaded Products Inc. (''Petitioner'') timely withdrew its request for review for five companies: (1) Autocraft Industry Ltd.; (2) Autocraft Industry (Shanghai) Ltd.; (3) Fuda Xiongzhen Machinery Co., Ltd.; (4) Shanghai Furen International Trading; and (5) Shanghai Printing and Packaging Machinery Corp. No other party requested a review on these five companies.

[27] *See Preliminary Results,* 78 FR at 21101.

[28] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 23, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Issues and Decision Memorandum

General Issues

COMMENT 1: SELECTION OF SURROGATE COUNTRY
A. Comparable Level of Economic Development
B. Significant Producer of Comparable Merchandise
C. Data Considerations
COMMENT 2: ADJUSTMENTS TO FINANCIAL RATIOS
COMMENT 3: CORRECTIONS TO MARGIN CALCULATION
COMMENT 4: REJECTED STEEL THREADED ROD
COMMENT 5: ASSESSMENT RATES
COMMENT 6: SURROGATE VALUE FOR INLAND FREIGHT
COMMENT 7: SURROGATE VALUE FOR BROKERAGE AND HANDLING (''B&H'')
COMMENT 8: REVOCATION FOR THE RMB/IFI GROUP

Appendix II—Companies Part of the PRC-Wide Entity

Autocraft Industry Ltd
Autocraft Industry (Shanghai) Ltd
Billion Land Ltd
China Brother Holding Group Co. Ltd
China Jiangsu International Economic Technical Cooperation Corporation
Dongxiang Accuracy Hardware Co., Ltd
EC International (Nantong) Co. Ltd
Fastwell Industry Co. Ltd
Fuda Xiongzhen Machinery Co., Ltd
Fuller Shanghai Co. Ltd
Gem-Year Industrial Co. Ltd
Haiyan Dayu Fasteners Co., Ltd
Haiyan Hurras Import & Export Co. Ltd
Haiyan Hurras Import Export Co. Ltd
Haiyan Jianhe Hardware Co. Ltd
Haiyan Julong Standard Part Co. Ltd
Hangzhou Grand Imp. & Exp. Co., Ltd
Jiangsu Dainan Zhenya Import & Export Co. Ltd
Jiangsu Zhenya Special Screw Co., Ltd
Jiashan Zhongsheng Metal Products Co., Ltd
Jiaxing China Industrial Imp & Exp Co. a/k/a Jiaxing Cnindustrial Imp. & Exp. Co., Ltd.
Jiaxing SINI Fastener Co., Ltd
Jiaxing Wonper Imp. & Exp. Co. Ltd
Nanjing Prosper Import & Export Corporation Ltd
Ningbiao Bolts & Nuts Manufacturing Co.
Ningbo Baoli Machinery Manufacture Co., Ltd
Ningbo Beilun Milfast Metalworks Co. Ltd
Ningbo Dexin Fastener Co. Ltd
Ningbo Dongxin High-Strength Nut Co., Ltd
Ningbo Fastener Factory
Ningbo Grand Asia Import & Export Co., Ltd
Ningbo Healthy East Import & Export
Ningbo Jinding Fastening Piece Co., Ltd
Ningbo Pal International Trading Co.
Ningbo Qunli Fastener Manufacture Co., Ltd
Ningbo Shuanglin Auto Parts Co., Ltd
Ningbo Shuanglin Industry Manufacturing Ltd
Ningbo Xiangxiang Large Fasteners
Ningbo XinXing Fasteners Manufacture Co., Ltd
Ningbo Yinzhou Foreign Trade Co., Ltd
Ningbo Yinzhou JH Machinery Co.
Ningbo Zhenghai Youngding Fastener Co., Ltd
Ningbo Zhongjiang Petroleum Pipes & Machinery Co., Ltd
Panther T&H Industry Co. Ltd
PSGT Trading Jingjiang Ltd
Qingdao Free Trade Zone Health Intl.
Shanghai East Best Foreign Trade Co.
Shanghai East Best International Business Development Co., Ltd
Shanghai Fortune International Co. Ltd
Shanghai Furen International Trading
Shanghai Nanshi Foreign Economic Co.
Shanghai Overseas International Trading Co. Ltd
Shanghai P&J International Trading Co., Ltd
Shanghai Prime Machinery Co. Ltd
Shanghai Printing & Dyeing and Knitting Mill
Shanghai Printing & Packaging Machinery Corp.
Shanghai Recky International Trading Co., Ltd
Suntec Industries Co., Ltd
T and C Fastener Co. Ltd
Tandem Industrial Co., Ltd
Tong Ming Enterprise
Wisechain Trading Ltd
Xingtai City Xinxing Fasteners Co.
Zhejiang Artex Arts and Crafts
Zhejiang Guangtai Industry and Trade
Zhejiang Heiter Industries Co., Ltd
Zhejiang Heiter MFG & Trade Co. Ltd
Zhejiang Morgan Brother Technology Co. Ltd

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DEPARTMENT OF COMMERCE

International Trade Administration

Aviation Trade Mission to Brazil From May 12–16, 2014

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration (ITA), U.S. and Foreign Commercial Service (CS) and Industry and Analysis are organizing an Aerospace and Aviation Trade Mission to Brazil from May 12–16, 2014. The purpose of the mission is to introduce U.S. firms to Brazil's rapidly expanding market for aerospace and aviation products and services, including airport equipment, air traffic management products and services, and aerospace equipment and parts, and to assist U.S. companies in the pursuit of export

opportunities in this sector. The mission to Brazil is designed for U.S. aviation and aerospace manufacturers and service providers, particularly small- and medium-sized enterprises (SMEs), interested in long-term business opportunities in Brazil, as well as the trade associations/organizations that represent them. Target sectors holding high potential for U.S exporters include: aircraft parts (particularly for the aftermarket), business aviation, general aviation and helicopters, airspace and air traffic flow management, ground support equipment, baggage handling systems, meteorological information management, surveillance and satellite navigation, and airport/aviation security.

Trade mission participants will have two days of one-on-one business appointments arranged by the CS in São Paulo, the business capital of Brazil. Trade mission participants will then have the option to have additional meetings arranged in Rio de Janeiro, Belo Horizonte, or Brasilia, where CS offices can arrange meetings with both private sector representatives and state and local government officials.

The mission supports President Obama's National Export Initiative (NEI) and his goal of strengthening the U.S. economy and U.S. competitiveness through meaningful job creation. The mission will help new to market companies learn about the Brazilian aviation market and make initial contacts. The mission will help U.S. companies already doing business in Brazil to increase their footprint and deepen their business interests. The mission will also support the U.S.-Brazil Aviation Partnership, which was established to strengthen and expand the civil aviation relationship between the two countries.

The mission will help participating firms and associations/organizations gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports of products and services to Brazil. The mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with state and local government officials and industry leaders; and networking events. Participating in an official U.S. industry delegation, rather than traveling to Brazil on their own, will enhance the participants' ability to secure meetings in Brazil.

Commercial Setting

Brazil has an established aerospace manufacturing sector and produces a wide range of aerospace products. Perhaps best known for producing regional jets, Brazilian manufacturers also make turboprops, military aircraft, agricultural aircraft, business aircraft, helicopters, and other general aviation aircraft. The most well-known Brazilian manufacturer is Embraer, which has delivered more regional jets than its only competitor (Canada's Bombardier) each year since 2006. Brazilian firms are highly integrated into the global aerospace supply chain and have embarked on risk-sharing projects and joint ventures with foreign firms both in Brazil and abroad.

Brazil is a major supplier to the United States' market, though it competes more in sales of final aircraft than in sales of parts and components. Indeed, Brazilian manufacturers claim to import a significant amount of parts and components from non-Brazilian suppliers, including suppliers in the United States. However, it was only in the 2000s that Brazil consistently became one of the top ten U.S. export markets for aerospace equipment, likely due to the increasing success of Embraer's regional jet and business aircraft programs. In 2012, U.S. firms exported $6.8 billion worth of aerospace products to Brazil.

Brazil also has a complex domestic aviation industry, including a growing network of airports and services for commercial aviation and business aviation. Due to growing demand for all forms of air travel, as well the infrastructure demands of the 2014 World Cup and 2016 Olympics, Brazil is launching improvements to about 270 regional airports. Brazilian states and cities also have specific plans to develop infrastructure for helicopters, in part because of the growth of the domestic oil and gas industry. Regional infrastructure projects are expected to begin in 2014. Information about additional infrastructure opportunities can be found at: *http://export.gov/industry/aerospace/eg_main_059003.asp*

São Paulo/São José dos Campos

With almost 20 million people, São Paulo is the largest city in Brazil, the largest city in the southern hemisphere and Americas, and the world's seventh largest city by population. It is the country's economic and financial center and traditional access point for companies entering the Brazilian market. São Paulo's Guarulhos airport is a major hub for international passenger traffic into Brazil and is home to maintenance organizations for several Brazilian and international airlines. The São Paulo metropolitan area is also home to major airlines AZUL and LATAM, a pan-Latin America airline formed in 2012 after the merger of Brazilian airline TAM and Chilean airline group LAN.

50 miles from São Paulo is São José dos Campos, a major Brazilian industrial center and home to Embraer, producer of commercial, military, and executive aircraft. In 2012, Embraer delivered 205 aircraft and closed the year with firm orders of 185 aircraft valued at US$12.5 billion. The city is also home to one of Brazil's top engineering schools, the Aeronautical Institute of Technology, and several research institutions dedicated to aviation and space. More information about the aerospace cluster in São José can be found at: *http://www.aerospacecluster-brasil.com.br/english/default.aspx*

Rio de Janeiro

Rio de Janeiro will host the 2016 Summer Olympics Games. This will be the first Summer Olympics held during the host city's wintertime, as well as the first time a South American city will host the event. Unlike in London, the percentage of investments dedicated to transportation will be higher than investments dedicated to Olympic sports projects such as arenas and stadiums. Rio is also home to the Department of Airspace Control (DECEA), the branch of the Ministry of Defense responsible for all air traffic in Brazil, including civil and commercial traffic. Finally, Rio is home to Petrobras, Brazil's largest company and a significant global producer of oil and energy products.

Belo Horizonte

Belo Horizonte is the capital of Minas Gerais, and Greater Belo Horizonte is the third largest metropolitan area in Brazil, after São Paulo and Rio. Belo Horizonte is a major industrial center with production centered on steel and steel products, since Minas Gerias is an iron and metal-rich area. Tancredo Neves, the states' main airport, is expected to become the third largest international gateway to Brazil and is enacting a 3-phase $2 billion plan to expand the runway system and terminal space. Belo Horizonte is also home to Lider Aviacão, an air taxi, maintenance, and aircraft sales firm and the procurement and maintenance divisions of GOL, a major airline.

Brasilia

Brasilia is the capital of Brazil and is home to many government institutions responsible for the aerospace and aviation industries. These agencies include INFRAERO, a government agency that manages 63 airports, 23 Aeronautical Telecommunication Station, 38 Units Techniques aeronautics and 34 cargo logistics terminals in Brazil; the Agencia Nactional de Aviacao Civil (ANAC), the civil aviation authority; and the Secretaria de Aviação Civil (SAC), a new entity that coordinates and supervises the other Brazilian civil aviation entities. In 2013, INFRAERO's new subsidiary, INFRAERO Services, will become operational. The new company's main goal is to support state and local governments in the management of regional airports.

Mission Goals

The goals of the Aerospace and Aviation Trade Mission to Brazil are to provide U.S. participants with first-hand market information, and one-on-one meetings with business contacts, including potential end users and partners, so that they can position themselves to enter or expand their presence in the Brazilian market. As such, the mission will focus on helping U.S. companies and trade associations/organizations obtain market information, establish business and government contacts, solidify business strategies, and/or advance specific projects.

Mission Scenario

The mission will start in São Paulo with an opening briefing and a no-host dinner on Monday, May 12. The next day the participants will attend Gold Key business meetings and participate in an evening reception. On Wednesday, they will have additional Gold Key sessions. On Thursday, the delegates will have the option of traveling to a second city (Rio de Janeiro, Belo Horizonte, or Brasilia) for additional business meetings. U.S. participants will be counseled before and after the mission by CS Brazil staff.

Participation in the mission will include the following:

- Pre-travel briefings on subjects from business practices in Brazil to security;
- Pre-scheduled meetings with government officials, potential partners, distributors, agents, end users and local industry contacts in São Paulo;
- Airport transfers in São Paulo;
- Participation in a networking reception in São Paulo.

Mission Timetable

Monday, May 12, 2014

- Country briefing by U.S. Embassy staff on programs and opportunities in the Brazilian aviation sector.
- No-host dinner with mission participants.

Tuesday, May 13, 2014

- Business meetings in São Paulo.
- Evening reception with Brazilian and U.S. industry representatives.

Wednesday, May 14, 2014

- Site visits and business meetings in São Paulo and/or São José dos Campos.

Thursday, May 15, 2014

- Optional travel to a second destination.
- Business meetings.

Friday, May 16, 2014

- Business meetings.
- Mission concludes.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the DOC. All applicants will be evaluated, on a rolling basis, on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 20 firms and/or trade associations or organizations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association/organization has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Trade Mission will be $2,950.00 for a small or medium-sized enterprise (SME) [1] and trade associations/organization; and $3,230.00 for large firms. The fee for each additional firm representative (large firm or SME/trade organization) is $600. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged by the CS for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

Exclusions

The mission fee does not include any personal travel expenses such as lodging, most meals, local ground transportation, except as stated in the proposed timetable, or air transportation from the U.S. to the mission sites and return to the United States. Business visas may be required. Government fees and processing expenses to obtain such visas are also not included in the mission costs. However, the U.S. Department of Commerce will provide instructions to each participant on the procedures required to obtain necessary business visas.

Conditions for Participation

An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content. In the case of a trade association or organization, the applicant must certify that for each company to be represented by the association/organization, the products and/or services the represented company seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Each applicant must also certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations. In the case of a trade association/organization, the applicant must certify that for each company to be represented by the association/organization, the products and services the represented company seeks to export through the mission would be in compliance with U.S. export controls and regulations.

In addition, each applicant must:

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html).* Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

• Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Participation Criteria

Targeted mission participants are U.S. companies or trade associations/organizations providing aviation equipment, technology and services that have an interest in learning more about the Brazilian market. Target sectors holding high potential for U.S exporters include aircraft parts (particularly for the aftermarket), business aviation, general aviation and helicopters, airspace and air traffic flow management, ground support equipment, baggage handling systems, meteorological information management, surveillance and satellite navigation, and airport/aviation security.

The following criteria will be evaluated in selecting participants:

• Suitability of the company's (or, in the case of a trade association or trade organization, represented companies') products or services for the Brazilian market;

• Company's (or, in the case of a trade association or trade organization, represented companies') potential for business in Brazil, including likelihood of exports resulting from the mission;

• Consistency of company's (or, in the case of a trade association or trade organization, represented companies') products or services with the scope and desired outcome of the mission's goals.

Additional factors, such as diversity of participant company size, type, location, and demographics, may also be considered during the review process. Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeline for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than March 5, 2014. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis. Applications received after March 5, 2014, will be considered only if space and scheduling constraints permit.

Contacts

Industry and Analysis Washington DC, Alexis Haakensen, Aerospace Industry Specialist, Office of Transportation and Machinery, Phone: 202–482–6235; *alexis.haakensen@trade.gov;*

U.S. Commercial Service Brazil, Marina Konno, U.S. Commercial Service, Sao Paolo, Brazil, Tel: + 55 +11–5186–7033, Email: *Marina.Konno@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–26400 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration is amending the Notice published at 78 FR 42505, July 16, 2013, regarding the U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India to revise the date of the application deadline from November 1, 2013 to the new deadline of November 22, 2013.

SUPPLEMENTARY INFORMATION: Amendments to Revise the Application Deadline Date Recruitment for this Mission began in July 2013. Due to the government shutdown, it has been determined that additional time is needed to allow for additional recruitment and marketing in support of the mission. Applications will now be accepted through November 22, 2013 (and after that date if space remains and scheduling constraints permit). Interested institutions regionally accredited U.S. Universities/colleges offering graduate programs and 4-year undergraduate programs'' that have not already submitted an application are encouraged to do so.

Amendments

For the reasons stated above, the last three lines of the Timeframe for Recruitment and Applications section of the Notice of the U.S. Healthcare Education Mission to New Delhi, Hyderabad, and Ahmedabad, India, January 27–February 1, 2014 is amended as follows: ''Recruitment for the mission will begin immediately and conclude no later than November 22, 2013. The mission will be open on a first-come, first-served basis. Applications received after November 22, 2013 will be considered only if space and scheduling constraints permit.''

Contact Information

U.S. Commercial Service in India: Sathya Prabha, Commercial Assistant, Hyderabad, Tel: (91–40) 2330 4025, Email: *Sathya.Prabha@trade.gov.*

U.S. Export Assistance Center: Patrick Kenny, International Trade Specialist, Central-Southern NJ, Tel: 1 609 896 2731, Email: *Patrick.Kenny@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–26399 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC956

Marine Mammals; File No. 17030

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that C. Scott Baker, Ph.D., Oregon State University, Marine Mammal Institute, Hatfield Marine Science Center, 2030 SE

Marine Science Drive, Newport, OR 97365, has applied in due form for a permit to receive, import, and export marine mammals specimens for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before December 5, 2013.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 17030 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments on these applications should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 17030 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a permit to import, export and archive marine mammal parts (including DNA) collected legally from any species of cetaceans and pinnipeds, except walrus, for the purposes of scientific research. The proposed import, export and possession of samples is intended to result in an improved understanding of the taxonomy, genetic diversity, population structure, abundance and individual movement of cetaceans and pinnipeds. The anticipated source of samples includes hard and soft tissue from the following: museum collections; non-invasive sampling and biopsy sampling in the wild under separate permits; beachcast or dead-stranded specimens; individuals taken incidentally in fisheries (bycatch), including products legally sold in wildlife and fisheries markets. Possession, import, and export of samples are opportunistic and no takes of live animals is requested under this permit. Import and export are requested to include all countries with an appropriate management authority (e.g., Parties of the Convention on Trade in Endangered Species). The requested period of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 31, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–26466 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

National Telecommunications and Information Administration

[Docket No. 130927852–3852–01]

Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Change in Public Meeting Date and Change in Public Comment Periods.

SUMMARY: On October 3, 2013, the Department of Commerce's Internet Policy Task Force (Task Force) published a notice of public meeting and a request for public comments on five issues critical to economic growth, job creation, and cultural development that were identified in the Department's Green Paper on *Copyright Policy, Creativity, and Innovation in the Digital Economy* (Green Paper). The purpose of this notice is to announce a change in the date of the public meeting and additional opportunities for the submission of public comments. The public meeting (previously scheduled for October 30, 2013) will now be held on December 12, 2013. The deadline for the submission of pre-meeting comments is November 13, 2013. Post-meeting comments are due on or before January 10, 2014.

DATES: The deadline for filing pre-meeting comments is November 13, 2013. Any comments received by November 13, 2013, will be considered in the discussions at the December 12, 2013 public meeting. Participation in the public meeting does not, however, require the submission of comments.

The public meeting (previously scheduled for October 30, 2013) will now be held on December 12, 2013, from 8:30 a.m. to 5:30 p.m., Eastern Standard Time, at the United States Patent and Trademark Office (USPTO) in Alexandria, Virginia. Registration will begin at 8:00 a.m.

The deadline for filing post-meeting comments is January 10, 2014. The filing of pre-meeting comments is not a prerequisite for filing post-meeting comments.

ADDRESSES: The public meeting will be held at the United States Patent and Trademark Office in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, VA 22314. All major entrances to the building are accessible to people with disabilities.

Interested parties are encouraged to file comments electronically by email to: *CopyrightComments2013@uspto.gov*. Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to Office of Policy and External Affairs, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313–1450. Responders should include the name of

the person or organization filing the comment, as well as a page number, on each page of their submissions. Paper submissions should also include a CD or DVD containing the submission in Word, WordPerfect, or .pdf format. CDs or DVDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. All comments received are a part of the public record and will be made available to the public at *http://www.ntia.doc.gov/internetpolicytaskforce* without change. All personally identifiable information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The Task Force will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Hollis Robinson or Ben Golant, Office of Policy and External Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9300; email: *hollis.robinson@uspto.gov* or *benjamin.golant@uspto.gov*.

For further information regarding the public comments, contact Garrett Levin or Ben Golant, Office of Policy and External Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9300; email *garrett.levin@uspto.gov* or *benjamin.golant@uspto.gov*.

Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272–8400.

Public Meeting

The agenda for the public meeting will be available at least one week prior to the meeting and the meeting will be webcast. The agenda and webcast information will be available on the Internet Policy Task Force Web site, *http://www.ntia.doc.gov/internetpolicytaskforce* and the USPTO's Web site, *http://www.uspto.gov.* The meeting will be open to members of the public to attend, space permitting, on a first-come, first-served basis. Pre-registration for the meeting is available at: *http://events.SignUp4.com/GreenPaper.* The meeting will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation, real-time captioning of the webcast or other ancillary aids, should communicate their needs to Hollis Robinson or Ben Golant, Office of Policy and External Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272–9300; email: *hollis.robinson@uspto.gov* or *benjamin.golant@uspto.gov*, at least seven (7) business days prior to the meeting.

Attendees should arrive at least one-half hour prior to the start of the meeting. Persons who have pre-registered (and received confirmation) will have seating held until 15 minutes before the program begins.

Dated: October 31, 2013.

Teresa Stanek Rea,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

Lawrence E. Strickling,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 2013–26487 Filed 11–4–13; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–55 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 31, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 25 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-55, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Republic of Korea for defense articles and services estimated to cost $404 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FOR J.W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Korea

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$401 Million
Other	$3 Million
Total	$404 Million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* procurement of 112 Patriot Anti-Tactical Missiles (ATM, which will be upgraded to the Guided Enhanced Missile-Tactical (GEM–T) configuration via Direct Commercial Sale), test equipment, spare and repair parts, personnel training, publications and technical data, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Army (ZDG)

(v) *Prior Related Cases, if any:*

FMS case ZAA—$428 million—30 Oct 07

FMS case ZAH—$10 million—02 Jan 08

FMS case BCR—$19 million—18 Mar 10

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 25 Oct 13

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Republic of Korea—Patriot Anti-Tactical Missiles

The Republic of Korea (ROK) has requested a possible sale to procure 112 Patriot Anti-Tactical Missiles (ATM, which will be upgraded to the Guided Enhanced Missile-Tactical (GEM–T) configuration via a Direct Commercial Sale), test equipment, spare and repair parts, personnel training, publications and technical data, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $404 million.

This proposed sale will contribute to the foreign policy goals and national security objectives of the United States by meeting the legitimate security and defense needs of an ally and partner nation. The ROK continues to be an important force for peace, political stability, and economic progress in North East Asia. These upgraded missiles will provide the ROK with an enhanced capability to defend against ballistic missile, aircraft and cruise missile threats.

The proposed sale of ATMs (and subsequent upgrade to GEM–T) contributes to the ROK's goal to develop a more capable defense force and enhance interoperability with U.S. forces. The ROK will have no difficulty absorbing and maintaining these additional missiles in its inventory.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor for the procurement and upgrade will be Raytheon Company in Andover, Massachusetts.

Implementation of this proposed sale will not require the permanent assignment of any U.S. Government or contractor representatives to Korea. Support teams will travel to the country on a temporary basis for logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Patriot Anti-Tactical Missiles (ATM) (which will be upgraded to Guided Enhanced Missile-Tactical (GEM–T)) contains classified components and critical/sensitive technology. The ATM hardware is unclassified. The ATM will continue to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The ATM sensitive/critical technology is primarily in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to the ATM Fuze.

3. Information on vulnerability to electronic countermeasures and counter-counter measures, system performance capabilities and effectiveness, survivability and vulnerability data, non-cooperative target recognition, low observable technologies, select software/software documentation and test data are classified up to and including Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. This proposed effort is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. It is believed the Republic of Korea can provide adequate protection of the technology being released.

[FR Doc. 2013–26438 Filed 11–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–54]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–54 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 31, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 25 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-54, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $96 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J.W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 13–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b) (1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Republic of Singapore

(ii) *Total Estimated Value:*

Major Defense Equipment	$ 95 million
Other	$ 1 million
Total	$ 96 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 88 Unitary High Explosive (HE) Guided Multiple Launch Rocket System (GMLRS) Pods with Tri-mode Fuse, and, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Army (VFM)

(v) *Prior Related Cases, if any:*
FMS Case VDO–$330M–05 Dec 07
FMS case VEN–$10.6M–25 Feb 11
FMS case VET–$10.5M–26 Mar 12

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress: 25 Oct 13*

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore—Guided Multiple Launch Rocket System

The Government of Singapore has requested a possible sale of 88 Unitary High Explosive (HE) Guided Multiple Launch Rocket System (GMLRS) Pods with Tri-mode Fuse, and, containers, spare and repair parts, support equipment, tools and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, logistics, and technical support services, and other related elements of logistics and program support. The estimated cost is $96 million.

This proposed sale will contribute to the foreign policy and national security of the United States by increasing the ability of the Republic of Singapore to contribute to regional security. The proposed sale will improve the security of a strategic partner which has been, and continues to be, an important force for political stability and economic progress in the Asia Pacific region.

This proposed sale provides the Republic of Singapore with additional assets critical to maintaining its defensive capabilities to protect its territory and deter regional aggression. The GMLRS pods strengthen the Republic of Singapore Army's ability to defeat long-range artillery, air defense platforms, and light-armored vehicles in a precise, low-collateral damage strike. The Republic of Singapore will have no difficulty absorbing these additional GMLRS pods into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Missile and Fire Control in Grand Prairie, Texas. There are no known offset agreements proposed in connection with the potential sale.

Implementation of this proposed sale will require U.S. Government or contractor representatives to travel to Singapore for a period of one week to provide equipment deprocessing/fielding and Quality Assurance Team acceptance testing.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The GMLRS are the U.S. Army's primary munitions for organic Joint Expeditionary, all-weather, 24/7 tactical precision guided rockets employed by modular Fire Brigade Combat Teams, Division, Joint Special Operations Forces, and Joint Forces combatant commanders and are also a key component of the Marine Corps Future Fighting Effort. The GMLRS is the primary munition for units fielded with the High Mobility Artillery Rocket System (HIMARS) and Multiple Launch Rocket System (MLRS) M270A1 rocket and missile launcher platforms. The GMLRS provides close, medium, and long-range precision and area fires to destroy, suppress, and shape threat forces, including the following: cannon, mortar, rocket and artillery, light material armor, personnel, command and control, and air defense surface targets. The GMLRS integrates guidance and control packages with an improved rocket motor achieving greater range and precision accuracy, requiring fewer rockets to defeat targets, thereby reducing the logistics burden. The GMLRS-Unitary expands the MLRS target set into urban and complex environments by adding point, proximity and delay fusing modes. With over 2,500 rockets of its type fired in support of Overseas Contingency Operations (OCO), the GMLRS-Unitary rocket has demonstrated high effectiveness and low collateral damage while supporting Troops in Contact (TIC).

2. A determination has been made that the Government of Singapore can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. The overall classification of the assembled GMLRS and components is Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, primarily performance characteristics, engagement algorithms and transmitter specific frequencies, the information could be used to develop countermeasures that might reduce weapon system effectiveness.

[FR Doc. 2013–26437 Filed 11–4–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery (ACANC)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U. S. C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U. S. C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160), the Department of the Army announces the following committee meeting:

Name of Committee: Advisory Committee on Arlington National Cemetery.

Date of Meeting: Tuesday, November 19, 2013.

Time of Meeting: 9:30 a.m.–3:30 p.m.

Place of Meeting: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA.

Proposed Agenda: Review and discuss the Section 60 Mementos Pilot Program, highlights of upcoming events for the 50th Commemoration of the interment of John F. Kennedy and 150th anniversary of Arlington National Cemetery, and the status of expansion projects.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer; *renea.c.yates.civ@mail.mil* or 703–614–1248.

SUPPLEMENTARY INFORMATION: The following topics are on the agenda for discussion:

- Army National Cemeteries operational update
- Memorial requests consultation IAW PL 112–154
- Subcommittee Activities:
  - ''Honor'' Subcommittee: independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used.
  - ''Remember'' Subcommittee: recommendations on preserving the marble components of the Tomb of the Unknown Soldier, including the cracks in the large marble

sarcophagus, the adjacent marble slabs, and the potential replacement of the marble stone for the sarcophagus already gifted to the Army.

- ''Explore'' Subcommittee: recommendations on Section 60 Mementos study and improving the quality of visitors' experiences, now and for generations to come.

The Committee's mission is to provide the Secretary of Defense, through the Secretary of the Army, independent advice and recommendations on Arlington National Cemetery, including, but not limited to:

a. Management and operational issues, including bereavement practices;

b. Plans and strategies for addressing long-term governance challenges;

c. Resource planning and allocation; and

d. Any other matters relating to Arlington National Cemetery that the Committee's co-chairs, in consultation with the Secretary of the Army, may decide to consider.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the Committee. Written statements must be received by the Designated Federal Officer at the following address: Advisory Committee on Arlington National Cemetery, ATTN: Designated Federal Officer (DFO) (Ms. Yates), Arlington National Cemetery, Arlington, Virginia 22211 not later than 5:00 p.m., Thursday, November 14, 2013. Written statements received after this date may not be provided to or considered by the Advisory Committee on Arlington National Cemetery until the next open meeting. The Designated Federal Officer will review all timely submissions with the Committee Chairperson and ensure they are provided to the members of the Advisory Committee on Arlington National Cemetery.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–26392 Filed 11–4–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0140]

Agency Information Collection Activities; Comment Request; Special Education-Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 6, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0140 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E115,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Tomakie Washington, 202–401–1097 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Special Education-Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA).

OMB Control Number: 1820–0683.

Type of Review: a revision of an existing information collection.

Respondents/Affected Public: Individuals and households, private sector.

Total Estimated Number of Annual Responses: 38,163.

Total Estimated Number of Annual Burden Hours: 14,761.

Abstract: The data collection under this revision and renewal request is governed by the ''Additional Requirements'' section of the Personnel Preparation to Improve Services and Results for Children with Disabilities—Combined Priority for Personnel Preparation and Preparation of Leadership Personnel notice, published in the **Federal Register** on March 25, 2005 and by Sections 304.23–304.30 of the June 5, 2006, regulations that implement Section 662 (h) of the IDEA Amendments of 2004, which require that individuals who receive a scholarship through the Personnel Development Program funded under the Act subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy the requirements of the regulations must repay all or part of the cost of assistance, in accordance with regulations issued by the Secretary. These regulations implement requirements governing, among other things, the service obligation for scholars, reporting requirements by grantees, and repayment of scholarships by scholars. In order for the federal government to ensure that the goals of the program are achieved, certain data collection,

recordkeeping, and documentation are necessary. In addition this data collection is governed by the Government Performance Results Act (GPRA). GPRA requires Federal agencies to establish performance measures for all programs, and the Office of Special Education Programs' (OSEP) has established performance measures for the Personnel Development Program. Data collection from scholars who have received scholarships under the Personnel Development Program is necessary to evaluate these measures.

Dated: October 30, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–26407 Filed 11–4–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0089]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; A Study of Feedback in Teacher Evaluation Systems

AGENCY: Department of Education (ED, Institutes of Education Services (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of a new information collection.

DATES: Interested persons are invited to submit comments on or before December 5, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0089 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103,Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Katrina Ingalls, 703–620–3655 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: A Study of Feedback in Teacher Evaluation Systems.

OMB Control Number: 1850–NEW.

Type of Review: New collection of information.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 5,802.

Total Estimated Number of Annual Burden Hours: 2,106.

Abstract: This study will collect information in teacher evaluation systems in states in the Central Region. The study will collect information about (1) how teachers perceive the feedback they receive including its utility, accuracy and credibility; (2) how teachers respond to feedback, including their access to learning opportunities related to feedback received; and (3) how teacher responsiveness to feedback relates to their performance in the classroom. The study will examine data from a teacher survey and data from evaluations of teacher performance in districts that are implementing teacher evaluation systems during the 2012–14 school year, researchers will pilot the teacher survey. The study will be implemented during the 2014–15 school year. The findings will be used by state and district leaders to prioritize needs both at the state and district level for training and guidance on providing feedback as part of teacher evaluation systems, and also for informing the state and districts of additional data collection needed to further understand feedback characteristics. This study will result in a report intended for district and state leaders who are responsible for selecting, developing, and implementing teacher evaluation systems and overseeing support for teachers professional growth and effectiveness.

Dated: October 30, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–26396 Filed 11–4–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information: Rehabilitation Training: Rehabilitation Long-Term Training Program—Vocational Rehabilitation Counseling Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129B.

Dates:

Applications Available: November 5, 2013.

Dates of Pre-Application Webinars: November 20, 2013, December 4, 2013, and January 8, 2014.

Deadline for Transmittal of Applications: February 3, 2014.

Deadline for Intergovernmental Review: April 4, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel

shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to the award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: This notice includes two absolute priorities. In order to receive funding in the competition announced in this notice, an applicant must meet both absolute priorities.

Absolute Priority 1: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 386.1). For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Rehabilitation Long-Term Training Programs Designed to Provide Academic Training in Areas of Personnel Shortages.

Under 34 CFR 75.105(c)(3), for this competition, we consider only applications that propose to provide training in the priority area of rehabilitation counseling.

Absolute Priority 2: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Vocational Rehabilitation Counseling.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding any Long-Term Training program for the fourth and fifth years, the Secretary will, as part of its review under 34 CFR 75.253(a), consider the following—

(a) The recommendation of the RSA project officer who will review the grantee's training program against the projections stated in the grantee's application. This review will take place during the last half of the third year of the project period.

(b) The timeliness and effectiveness with which all requirements of the grant award have been or are being met by the grantee, including the submission of annual performance reports and annual RSA Scholar Payback Program reports, and adherence to fiduciary responsibilities related to the budget submitted in the application; and

(c) The quality, relevance, and usefulness of the grantee's training program and activities and the degree to which the training program and activities and their outcomes have contributed significantly to improving consumer access to qualified rehabilitation counselors who are prepared to adequately address their employment needs and goals.

As a result, when awarding scholarships, grantees must inform scholars at the onset of the program that the scholarship is dependent upon: (1) Availability of funding, and (2) a program review to determine continuance of a fourth and fifth year of funding.

Note: While applicants may not hire staff or select trainees based on race or national origin/ethnicity, they may conduct outreach activities to increase the pool of eligible minority candidates. We may disqualify and not consider for funding any applicant that indicates that it will hire or train a certain number or percentage of minority candidates.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations in 34 CFR parts 385 and 386. (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $9,166,902.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $190,000–$200,000.

Estimated Average Size of Awards: $195,000.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 46.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Long-Term Training program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

To obtain a copy from the program office, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc)

by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 45 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

The page limit does apply to all of the application narrative section, Part III. Therefore, we will reject your application if you exceed the page limit in Part III or exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: November 5, 2013.

Dates of Pre-Application Webinars: Interested parties are invited to participate in pre-application webinars. The pre-application webinars with staff from the Department will be held on November 20, 2013, December 4, 2013, and January 8, 2014, at 2:00 p.m., Washington, DC time. The webinars will be recorded. For further information about the pre-application webinars, visit the National Clearinghouse of Rehabilitation Training Materials (NCRTM) at *www.ncrtm.org.*

Deadline for Transmittal of Applications: February 3, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 4, 2014.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/aapplicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training competition, CFDA Number 84.129B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation

Training: Rehabilitation Long-Term Training competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.129, not 84.129B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: RoseAnn Ashby, U.S. Department of Education, 400 Maryland Avenue SW., room 5055, PCP, Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies

of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129B), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 386.20 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of RSA's Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified vocational rehabilitation (VR) personnel, including counselors and other professional staff, working in State VR or related agencies. At least 75 percent of all grant funds must be used for direct payment of student scholarships.

Grantees are required to maintain a system that safeguards the privacy of current and former scholars from the time they are enrolled in the program until they successfully meet their service obligation through qualified employment or monetary repayment. This system must ensure that scholars sign a payback agreement and an exit form when they exit the program, regardless of whether they drop out, are removed, or successfully complete the program. Specifically, each grantee is required to maintain the following scholar information:

(a) Current contact information for all students receiving scholarships, including home address, email, and a phone number (home or cell);

(b) A point of contact for each scholar in the event that the grantee is unable to contact the student. This contact must be at least 21 years of age and may

be a parent, relative, spouse, partner, sibling, or guardian;

(c) Cumulative financial support granted to scholars;

(d) Scholar debt in years;

(e) Program completion date and reason for exit for each scholar;

(f) Annual documentation from the scholar's employer(s) until the scholar completes the service obligation. This documentation must include the following elements in order to verify qualified employment: Start date of employment to the present date, confirmation of full-time or part-time employment (if the scholar is working part-time the number of hours per week must be included in the documentation), type of employment, and a description of the roles and responsibilities performed on the job. This information is required for each employer if the scholar has worked in more than one setting in order to meet the service obligation.

If the scholar is employed in a related agency, the agency must also provide documentation to validate that there is a relationship with the State VR agency. This may be a formal or informal contract, cooperative agreement, memorandum of understanding, or related document;

(g) Annual documentation from the scholar's institution of higher education to verify dates of deferral, if applicable. The documentation may be prepared by the scholar's advisor or department chair and must include: Confirmation of enrollment date, estimated graduation date, confirmation that the scholar is enrolled in a full-time course of study, and confirmation of the scholar's intent to fulfill the service obligation upon completion of the program.

Grantees are required to report annually to RSA on the data elements described above using the RSA Grantee Reporting Form, OMB number 1820–0617, an electronic reporting system supported by the RSA Management Information System (RSA MIS). In addition, grantees are required to utilize all forms required by RSA to prepare and process repayment, as well as requests for deferral and exceptions. The RSA Grantee Reporting Form collects specific data, including the number of scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (e.g., State VR agency, nonprofit service provider, or professional practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR and related agencies.

In addition, all Rehabilitation Long-Term Training grantees must submit the following quantitative and qualitative data in an annual performance report:

(a) Program activities that occurred during each fiscal year from October 1 to March 31 and projected program activities to occur from April 1 to September 30. For subsequent reporting years, grantees confirm projections made from the prior year;

(b) Summary of academic support and counseling provided to scholars to ensure successful completion;

(c) Summary of career counseling provided to scholars upon program completion to ensure that they have support during their search for qualifying employment, as well as during their initial months of their employment. This may include but is not limited to informing scholars of professional contacts, networks, and job leads, matching scholars with mentors in the field, and connecting scholars to other necessary resources and information;

(d) Summary of partnership and coordination activities with State VR agencies and community-based rehabilitation providers. This may include but is not limited to obtaining input and feedback regarding curricula from State VR agencies and community-based rehabilitation providers; organizing internships, practicum agreements, job shadowing, and mentoring opportunities; and assessing scholars at the work site;

(e) Assistance provided to scholars who may not be meeting academic standards or who are performing poorly in a practicum or internship setting;

(f) Results of the program evaluation, as well as information describing how these results will be used to make necessary adjustments and improvements to the program;

(g) Results from scholar internship, practicum, job shadowing, or mentoring assessments, as well as information describing how those results will be used to ensure that future scholars receive all necessary preparation and training prior to program completion;

(h) Results from scholar evaluations and information describing how these results will be used to ensure that future scholars will be proficient in meeting the needs and demands of today's consumers and employers;

(i) Number of scholars who began an internship during the reporting period;

(j) Number of scholars who completed an internship during the reporting period;

(k) Number of scholars who dropped out or were dismissed from the program during the reporting period;

(l) Number of scholars receiving RSA scholarships during the reporting period;

(m) Number of scholars who graduated from the program during the reporting period;

(n) Number of scholars who obtained qualifying employment during the reporting period;

(o) Number of vacancies filled in the State VR agency with qualified counselors from the program during the reporting period;

(p) A budget and narrative detailing expenditures covering the period of October 1 through March 31 and projected expenditures from April 1 through September 30. The budget narrative must also verify progress towards meeting the 10 percent match requirement. For subsequent reporting years, grantees will confirm projections made from the prior year; and

(q) Other information, as requested by RSA, in order to verify substantial progress and effectively report program impact to Congress and key stakeholders.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: RoseAnn Ashby, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue SW., Room 5055, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7258 or by email: *roseann.ashby@ed.gov.*

If you use a TDD or TTY, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., Braille, large

print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 30, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–26495 Filed 11–4–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–21–000]

Commission Information Collection Activities (FERC–574); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–574, Gas Pipeline Certificates: Hinshaw Exemption, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (78 FR 49491, 8/14/2013) requesting public comments. FERC received no comments on the FERC–574 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by December 5, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0116, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–21–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–574, Gas Pipeline Certificates: Hinshaw Exemption.

OMB Control No.: 1902–0116.

Type of Request: Three-year extension of the FERC–574 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–574 to implement the statutory provisions of Sections 1(c), 4 and 7 of the Natural Gas Act (NGA).[1] Natural gas pipeline companies file applications with the Commission furnishing information in order to facilitate a determination of an applicant's qualification for an exemption under the provisions of Section 1(c). If the Commission grants exemption, the natural gas pipeline company is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation, sale, or resale of natural gas in interstate commerce if: (a) They receive gas at or within the boundaries of the state from another person at or within the boundaries of that state; (b) such gas is ultimately consumed in such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission; and (d) that such State Commission is exercising that jurisdiction. 18 CFR Part 152 specifies the data required to be filed by pipeline companies for an exemption.

Type of Respondents: Pipeline Companies

Estimate of Annual Burden:[2] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–574—GAS PIPELINE CERTIFICATES: HINSHAW EXEMPTION

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours per response	Estimated total annual burden
(A)	(B)	(A) × (B) = (C)	(D)	(C) × (D)
1	1	1	60	60

[1] 15 U.S.C. 717–717w

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

The total estimated annual cost burden to respondents is $4,200 [60 hours * $70/hour [3] = $4,200].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 30, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26461 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1957–010]

Wisconsin Public Service Corp.; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Recreation Plan.

b. *Project No:* 1957–010.

c. *Date Filed:* January 4, 2013, and supplemented on October 16, 2013.

d. *Applicant:* Wisconsin Public Service Corp.

e. *Name of Project:* Otter Rapids Hydroelectric Project.

f. *Location:* The Otter Rapids Hydroelectric Project is located on the Wisconsin River in Vilas and Oneida Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r

h. *Applicant Contact:* Shawn Puzen, Wisconsin Public Service Corp, 700 North Adams St., Green Bay, WI 54307, (920) 433–1094.

i. *FERC Contact:* Mark Carter at (678) 245–3083, or email: *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 29, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1957–010) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Wisconsin Public Service Corp. (licensee) proposes to amend its recreation plan by permanently closing public access to the existing fishing platforms located downstream of the project dam (i.e., the pier located in the river channel and the pier located alongside the back of the powerhouse) and install a new fishing platform on the south bank of the river downstream of the powerhouse. Also, the licensee proposes to relocate the existing self-guided tour facilities from inside the powerhouse to outside of the powerhouse next to the proposed tailrace fishing platform. As reasons for its proposed changes, the licensee cites public safety and project security concerns.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–1957) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: October 30, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26457 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

[3] FY2013 Estimated Average Hourly Cost per FTE, including salary + benefits.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–9–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on October 17, 2013, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed an application in Docket No. CP14–9–000 pursuant to Section 7(b) and Section7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct its Bailey East Mine Panel 1L Project. Texas Eastern states in its application that, due to anticipated longwall mining activities of CONSOL Energy, Inc. (CONSOL), in Greene County, Pennsylvania, ground subsidence may occur. In order to maintain the operation of their existing pipeline facilities throughout the duration of the subsidence anticipated from the mining activities, Texas Eastern proposes to excavate, elevate, replace, and/or abandon by removal certain sections of five different pipelines and appurtenant facilities located in Greene County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the applications should be directed to Lisa A. Connolly, General Manager, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, or by calling (713) 627–4102 (telephone) or (713) 627–5947 (fax) *laconnolly@spectraenergy.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern Time on November 7, 2013.

Dated: October 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26454 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2350–000]

RS Colgen, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of RS Colgen, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is November 18, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26460 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2351–000]

Entergy Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Entergy Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 18, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26455 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–2349–000]

EAM Nelson Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of EAM Nelson Holdings, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 18, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26459 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13570–002]

Warm Springs Irrigation District; Notice of Technical Meeting

a. *Project Name and Number:* Warm Springs Dam Hydroelectric Project No. 13570

b. *Date and Time of Meeting:* November 14, 2013; 11:00 a.m. Pacific Time (2:00 p.m. Eastern Time).

c. *Place:* Telephone conference call.

d. *FERC Contact:* Kelly Wolcott, *kelly.wolcott@ferc.gov* or (202) 502–6480.

e. *Purpose of Meeting:* Discuss the special status species plant survey for *Stanleya confertiflora* requested by the U.S. Bureau of Land Management on June 7, 2013; the coordination of the National Environmental Policy Act (NEPA) analysis; and the overall processing schedule for the project.

f. *Proposed Agenda:*

1. Introduction
2. Meeting objectives
3. Plant survey discussion
4. NEPA coordination
5. Schedule of Project.

g. A summary of the meeting will be prepared for the project's record.

h. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate by phone. Please contact Kelly Wolcott at *kelly.wolcott@ferc.gov* or (202) 502–6480 by close of business Thursday, November 7, 2013, to RSVP to receive specific instructions on how to participate.

Dated: October 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26453 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR14–7–000]

Sunoco Pipeline L.P.; Notice of Petition for Declaratory Order

Take notice that on October 28, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2013), Sunoco Pipeline L.P. (SPLP) filed a petition requesting a declaratory order approving priority service, overall tariff and rate structure, and allocation methodology for the proposed Granite Wash Extension pipeline to transport crude oil from the Granite Wash Shale to Ringgold, Texas, as explained more fully in the petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 19, 2013.

Dated: October 30, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26456 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14532–000]

Northwoods Renewables, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 21, 2013, Northwoods Renewables, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Bethlehem Hydroelectric Project to be located on the Ammonoosuc River, in the town of Bethlehem, Grafton County, New Hampshire. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) An existing 29-foot-high, 282-foot-long concrete dam that includes a 20-foot-high, 139.5-foot-long spillway with new 3-foot-high flashboards; (2) an existing 1,500-foot-long, 5.5-acre impoundment with a normal water surface elevation of 1140.4 feet National Geodetic Vertical Datum of 1929; (3) an existing sluiceway with a new 8-foot-wide, 10-foot-high sluice gate; (4) a new 4,000-cubic-foot forebay structure with a 35-foot-wide, 10-foot-high trashrack; (5) a new 9-foot-wide, 10-foot-high head gate; (6) a new 8-foot-diameter, 50-foot-long penstock that passes through an existing 25-foot-long gatehouse; (7) a new 25-foot-wide, 25-foot-long powerhouse containing a 140-kilowatt (kW) turbine-generating unit and 260-kW turbine-generating unit for a total installed capacity of 400 kW; (8) a new 25-foot-long excavated tailrace; (9) a new 100 to 200-foot-long, 480 to 600-volt buried transmission line and 35 to 60-foot-long, 19.9-kilovolt aboveground transmission line connecting the powerhouse to the Public Service of New Hampshire's distribution system; and (10) appurtenant facilities. The proposed project would have an estimated average annual generation of 1,480 megawatt-hours.

Applicant Contact: James World, 12 High Street, Lancaster, NH 03584; phone: (802) 463–3230.

FERC Contact: Brandon Cherry; phone: (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14532–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14532) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 29, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26452 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD14–4–000]

Pleasant Grove City, UT; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 22, 2013, as supplemented October 23, 2013, Pleasant Grove City, Utah (Pleasant Grove) filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act, as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The 120 kW Battle Creek Microhydro Power Generation Project—Project Blue Energy would utilize Pleasant Grove's water intake pipeline that delivers water to its water treatment plant, and it would be located in Utah County, Utah.

Applicant Contact: Dean Lundell, Pleasant Grove City, Utah, 70 South 100 East, Pleasant Grove, UT 84062 Phone No. (801) 785–4075.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A new 40-foot-long, 12-inch diameter intake pipe off the existing 12-inch diameter water supply pipeline; (2) a new powerhouse containing one new 120-kilowatt generating unit; (3) a new 50-foot-long, 12-inch diameter exit pipeline discharging water into an existing 12-inch water supply pipeline; and (4) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 327 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A), as amended by HREA	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts.	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the

[1] 18 CFR 385.2001–2005 (2013).

Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (e.g., CD14–4–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: October 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–26458 Filed 11–4–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9902–51-Region 5]

Notification of a Public Teleconference of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public teleconference of the Great Lakes Advisory Board (GLAB). The purpose of the teleconference is to continue discussions that will inform the development of a draft Great Lakes Restoration Initiative FY 2015–2019 Action Plan.

DATES: The public teleconference will be held on Wednesday, November 13, 2013 from 9:00 a.m. to 12 noon Central Time, 10 a.m. to 1 p.m. Eastern time. The teleconference number is: (877) 744–6030; Participant code: 91845630. Due to the recent lapse in federal operations, EPA has worked to provide, but cannot guarantee, 15 calendar days' public notice.

ADDRESSES: The public teleconference will take place by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this teleconference may contact Taylor Fiscus, Acting Designated Federal Officer (DFO), GLAB, by telephone at 312–353–6059 or email at *Fiscus.Taylor@epa.gov.* General information on the Great Lakes Restoration Initiative (GLRI) and the GLAB can be found on the GLRI Web site at *http://www.glri.us.*

SUPPLEMENTARY INFORMATION:

Background: The GLAB is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the GLAB in 2013 to provide independent advice to the EPA Administrator in her capacity as Chair of the federal Great Lakes Interagency Task Force. The GLAB conducts business in accordance with FACA and related regulations.

The GLAB consists of 18 members appointed by EPA's Administrator. Members serve as representatives of state, local and tribal government, environmental groups, agriculture, business, transportation, foundations, educational institutions and as technical experts.

The GLAB held a teleconference and meeting on May 21–22, 2013 (as noticed in 78 FR 26636–26637) to discuss the development of a draft FY 2015–2019 GLRI Action Plan.

The teleconference will provide opportunity for members of the public to submit oral comments in response to the charge questions for consideration by the GLAB. The charge questions are available at *http://www.glri.us.*

Also, periodic opportunities for the public to provide input for the GLAB to consider will be provided after the November 13 teleconference.

Availability of Teleconference Materials: The agenda and other materials in support of the teleconference will be available on the GLRI Web site at *http://www.glri.us* in advance of the teleconference.

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the GLAB. Input from the public to the GLAB will have the most impact if it provides specific information for the GLAB to consider. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by November 12, 2013 to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements must be received by November 12, 2013 so that the information may be made available to the GLAB for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: one each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the phone number or email address noted above, preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: October 28, 2013.

Cameron Davis,

Senior Advisor to the Administrator.

[FR Doc. 2013–26510 Filed 11–4–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 6, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0698.

Title: Section 25.203(i) and 73.1030(a)(2), Radio Astronomy Coordination Zone in Puerto Rico.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and State, local, or tribal Government.

Number of Respondents: 200 respondents, 1,000 responses.

Estimated Time per Response: 5–40 minutes (.0833 hours to .667 hours).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained 47 U.S.C. 154(i), 303(f), 303(r), and 309(j)(13).

Total Annual Burden: 142 hours.

Total Annual Costs: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this 60 day comment period to obtain the three year clearance from them. There is no change in the reporting and/or third party disclosure requirements.

On October 15, 1997, the FCC released a Report and Order, ET Docket No. 96–2, RM–8165, FCC 97–347, that established a Coordination Zone for new and modified radio facilities in various communications services that cover the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone and notification procedures enable the Arecibo Radio Astronomy Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Arecibo Observatory's operations, which also promotes efficient resolution of coordination problems between the applicants and the Arecibo Observatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–26467 Filed 11–4–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 06–122; DA 13–2090]

Proposed Changes to FCC Form 499–A, FCC Form 499–Q, and Accompanying Instructions

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document the Federal Communications Commission's Wireline Competition Bureau (Bureau) seeks comment on proposed revisions to the annual Telecommunications Reporting Worksheet, FCC Form 499–A (Form 499–A) and accompanying instructions (Form 499–A Instructions) to be used in 2014 to report 2013 revenues, and the quarterly Telecommunications Reporting Worksheet, FCC Form 499–Q (Form 499–Q) and accompanying instructions (Form 499–Q Instructions) to be used in 2014 to report projected collected revenues on a quarterly basis.

DATES: Comments are due on or before November 27, 2013.

ADDRESSES: Interested parties may file comments on or before November 27, 2013. All pleadings are to reference WC Docket No. 06–122. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Charles Eberle, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice in WC Docket No. 06–122; DA 13–2090, released October 29, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.bcpiweb.comhttp://www.bcpiweb.com.*

I. Synopsis

1. In order to promote clarity, transparency and predictability, the Wireline Competition Bureau (Bureau)

seeks comment on proposed revisions to (1) the annual Telecommunications Reporting Worksheet, FCC Form 499–A (Form 499–A) and accompanying instructions (Form 499–A Instructions) to be used in 2014 to report 2013 revenues, and (2) the quarterly Telecommunications Reporting Worksheet, FCC Form 499–Q (Form 499–Q) and accompanying instructions (Form 499–Q Instructions) to be used in 2014 to report projected collected revenues on a quarterly basis. The revisions to the forms and instructions are attached to the Public Notice in redline format, showing proposed changes from the forms and instructions currently in effect. The redlines may be viewed on the Commission's Web site, as follows: Form 499–A, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-2090A2.pdf;* Form 499–A Instructions, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-2090A3.pdf;* Form 499–Q, available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-2090A4.pdf;* and Form 499–Q Instructions available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-13-2090A5.pdf.*

II. Discussion

THE PROPOSED REVISIONS INCLUDE THE FOLLOWING MODIFICATIONS:

2. Form 499–A Instructions

A. Page 6. Revised to direct filers to the USAC Web site for details regarding documentation that must be filed when a filer ceases providing telecommunications.

B. Page 10. Revised to instruct filers that lack Internal Revenue Service employer identification numbers to contact USAC for an alternative identification number.

C. Pages 10–11. Revised to emphasize that all ''affiliated'' filers, as that term is defined under 47 U.S.C. 153, should enter a common identifier (the ''Affiliated Filers Name/Holding Company Name''). Typically this is the name of the filer's holding company, but in some instances, a group of affiliated filers may choose to designate an entity that is not the holding company of each affiliate. The term ''holding company'' is replaced by ''Affiliate Filers Name/Holding Company Name'' where appropriate throughout the Form 499–A Instructions.

D. Page 12. Contact information is added for filer inquiries regarding the instructions for Interstate Telecommunications Service Providers (ITSP) regulatory fee bills.

E. Page 12. Revised to clarify that only common carriers are required to designate an agent in the District of Columbia.

F. Page 15. A paragraph containing instructions on reporting of certain international revenues is moved from Page 20 to the ''Note on International Services'' on Page 14. This edit clarifies that the instruction applies to all international revenues.

G. Page 19. Consistent with the *Lifeline Reform Order* (FCC 12–134; rel February 6, 2012), the following sentence is deleted: ''Line 308 should include as revenues Lifeline Assistance reimbursement for the waived portion of subscriber line or presubscribed interexchange carrier charges from the Low Income or High Cost universal service support mechanism.

H. Pages 23–27. Consistent with the *2012 Wholesaler-Reseller Clarification Order* (FCC–134; rel November 5, 2012)), and consistent with a recent industry proposal to implement the order, revised to clarify the definition of reseller, provide sample reseller certification language, and clarify the safe harbor and reasonable expection standards for fillers that report revenues from reseller customers.

I. Page 28. Revised to clarify that total revenues reported in column (a) include intrastate revenues even though intrastate revenues are not reported separately on the Form 499–A.

J. Page 37. Revised to delete contact information for the Wireline Competition Bureau and Industry Analysis and Technology Division; filers should contact USAC with questions about the Forms 499.

K. Page 38. Consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 and the *2011 TRS Contributions Order* (FCC 11–150; rel October 7, 2011) implementing those requirements, citations to section 715 of the Act and 47 U.S.C. section 616 are added throughout, and page 38 is revised to clarify that providers of non-interconnected VoIP service are required to contribute to the interstate TRS support mechanism.

3. Form 499–Q Instructions.

A. Page 10. Revised to instruct filers that lack Internal Revenue Service employer identification numbers to contact USAC for an alternative identification number.

B. Page 10–11. Revised to emphasize that all ''affiliated'' filers, as that term is defined under 47 U.S.C. section 153, should enter a common identifier (the ''Affiliated Filers Name''). Typically this is the name of the filer's holding company, but in some instances, a group of affiliated filers may choose to designate an entity that is not the holding company of each affiliate.

C. Page 11–13. Consistent with the *2012 Wholesaler-Reseller Clarification Order,* revised to clarify the definition of ''reseller,'' provide sample reseller certification language, and clarify the safe harbor and ''reasonable expectation'' standards for filers that report revenues from reseller customers.

D. Page 15. Revised to clarify that total revenues reported in column (a) include intrastate revenues even though intrastate revenues are not reported separately on the Form 499–Q.

E. Page 21. Revised to delete contact information for the Wireline Competition Bureau and Industry Analysis and Technology Division; filers should contact USAC with questions about the Forms 499.

4. Stylistic Changes. In several instances, wording in the instructions is revised for clarification purposes, without changing the substance.

5. Date Changes. Dates are updated throughout. References to ''2013'' are changed to ''2014,'' and references to ''2012'' are changed to ''2013''.

6. Paperwork Reduction Act of 1995. This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information burden for small business concerns with fewer than 25 employees, pursuant to the Small Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

7. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. All pleadings are to reference WC Docket No. 06–122. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments.

9. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's

Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

10. Additional copies. We request that parties send one copy of each filing to each of the following:

• The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, *www.bcpiweb.com;* phone: (202) 488–5300 fax: (202) 488–5563;

• Charles Eberle, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B530, Washington, DC 20554; email: *Charles.Eberle@fcc.gov* and

• Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov.*

11. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432

12. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via email *www.bcpiweb.com.*

13. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Kimberly Scardino,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–26482 Filed 11–4–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Tuesday, November 19, 2013, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: October 31, 2013.

Robert E. Feldman,

Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. 2013–26439 Filed 11–4–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, November 7, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2013–26551 Filed 11–1–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Geneva State Company,* Geneva, Nebraska; to acquire 100 percent of the voting shares of, and merge with Riverdale Bancshares, Inc., and thereby indirectly acquire voting shares of State Bank of Riverdale, both in Riverdale, Nebraska.

Board of Governors of the Federal Reserve System, October 31, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–26440 Filed 11–4–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–20790–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before January 6, 2014.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–20790–60D for reference. Information Collection Request Title: Title X Family Planning Outreach and Enrollment Data Collection Form.

Abstract: The Office of Population Affairs within the Office of the Assistant Secretary for Health seeks to collect data from the Title X service delivery grantees on efforts related to outreach and enrollment to assist individuals in obtaining health insurance available as a result of the Affordable Care Act (ACA). Grantees will be asked to collect and report information on the numbers of individuals who are; (1) Assisted by a trained health center worker; (2) number of individuals who receive an eligibility determination for the marketplace, Medicaid or CHIP with the assistance of a trained worker; and (3) number of individuals who enroll in an insurance program with the assistance of a trained worker. The information will be reported for all sites in their grantee network.

Need and Proposed Use of the Information:

The Title X Family Planning Program (''Title X program'' or ''program'') is the only Federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services (e.g., screening for breast and cervical cancer, sexually transmitted diseases (STDs), and human immunodeficiency virus [HIV]). By law, priority is given to persons from low-income families (Section 1006[c] of Title X of the Public Health Service Act, 42 USC 300). The Office of Population Affairs (OPA) within the Office of the Assistant Secretary for Health administers the Title X program.

In fiscal year 2013, Congress appropriated approximately $296.8 million for Title X family planning activities. In accordance with the statute and regulations (42 Code of Federal Regulations [CFR] Part 59), at least 90% of the appropriation is used for clinical family planning services. In 2012, 98 Title X grantees provided family planning services to five million women and men through a network of 4,400 community-based clinics that include state and local health departments, tribal organizations, and other public and private nonprofit agencies. There is at least one clinic that receives Title X funds and provides services as required under the Title X statute in 73% of U.S. counties.

Sixty percent of the clients seen at Title X funded service sites self-identify as being uninsured. Seventy percent of the total clients are under the age 30.

Thus Title X service sites see a large proportion of young and uninsured individuals. Over the past years, OPA has encouraged grantees to develop enrollment programs to ensure that clients who are currently uninsured understand new health insurance options that are available as a result of the ACA. Some sites already assist individuals with enrolling in Medicaid and other public insurance programs. With the availability of the health insurance marketplace, many more service delivery sites are assisting clients enroll in health insurance programs.

OPA does not have any data on how many sites are assisting and enrolling clients into health insurance programs. Thus we seek to collect this data in order to understand the impact of Title X funded service sites on assisting and enrolling clients into insurance programs. We will utilize this information to guide strategic planning around how Title X service sites and prepare for, and assist with, the full implementation of the ACA. Through a separate data collection process called the Family Planning Annual Report (FPAR) (OMB No. 0990–0221, expiration January 31, 2016), OPA collects information on the insurance status of the clients served. With the implementation of the ACA, many of the traditional clients served by Title X service sites will qualify for health insurance. Due to the varying resources available at the State level to conduct outreach and enrollment, OPA has authorized grantees to use funding to conduct outreach and enrollment activities. However, we are not currently collecting data on how many sites are conducting such activities, the impact of those activities in enrolling clients into health insurance programs, and the need for additional resources to conduct outreach and enrollment. By collecting information on how many clients are assisted and enrolled in health insurance programs, OPA can; (1) measure the impact of Title X service sites in enrolling clients into insurance programs; (2) design strategic initiatives to encourage outreach and enrollment; and (3) better understand the impact of the Affordable Care Act on Title X service delivery sites.

Likely Respondents: This annual reporting requirement is for family planning services delivery projects authorized and funded by the Title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (Pub. L. 91–572)], which was enacted in 1970 as Title X of the Public Health Service Act (Section 1001 of Title X of the Public Health Service Act, 42 United States Code [USC] 300).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information.

This data is currently being collected by the Health Resources and Services Administration (HRSA) and the burden estimate is based on the supporting statement from their OMB application.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Outreach and Enrollment Activities	95	1	1	95

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2013–26401 Filed 11–4–13; 8:45 am]

BILLING CODE 4150–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–14–14BE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to CDC/ATSDR LeRoy Richardson, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Worksite Health Scorecard—New—National Center for Chronic Disease Prevention and Health

Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, chronic diseases such as heart disease, obesity and diabetes are among the leading causes of death and disability. Although chronic diseases are among the most common and costly health problems, they are also among the most preventable. Adopting healthy behaviors—such as eating nutritious foods, being physically active and avoiding tobacco use—can prevent the devastating effects and reduce the rates of these diseases.

Employers are recognizing the role they can play in creating healthy work environments and providing employees with opportunities to make healthy lifestyle choices. To support these efforts, the Centers for Disease Control and Prevention (CDC) plans to develop an online organizational assessment tool called the CDC Worksite Health Scorecard.

The CDC Worksite Health Scorecard is authorized by the Public Health Service Act and funded through the Prevention and Public Health Fund of the Patient Protection and Affordable Care Act (ACA). The CDC Worksite Health Scorecard is a tool designed to help employers assess whether they have implemented evidence-based health promotion interventions or strategies in their worksites to prevent heart disease, stroke, and related conditions such as hypertension, diabetes, and obesity. The assessment contains 125 yes/no questions that assess how evidence-based health promotion strategies are implemented at a worksite. These strategies include health promoting counseling services, environmental supports, policies, health plan benefits, and other worksite programs shown to be effective in preventing heart disease, stroke, and related health conditions. Employers can use this tool to assess how a comprehensive health promotion and disease prevention program is offered to their employees, to help identify program gaps, and to prioritize across the following health topics: Organizational Supports; Tobacco Control; Nutrition; Physical Activity; Weight Management; Stress Management; Depression; High Blood Pressure; High Cholesterol; Diabetes; Signs and Symptoms of Heart Attack and Stroke; Emergency Response to Heart Attack and Stroke; Lactation Support; Community Resources; Occupational Health and Safety; and Vaccine-Preventable Diseases.

Employers, human resource managers, health benefit managers, health education staff, occupational nurses, medical directors, wellness directors, or others responsible for worksite health promotion can use the CDC Worksite Health Scorecard to establish benchmarks for their organizations and track improvements over time. State health departments may assist employers and business coalitions in using the tool and help them find ways to establish healthier workplaces. State health departments also can use the tool for monitoring worksite practices, establishing best practice benchmarks, and more effectively directing resources to support employers. Employers who complete the CDC Worksite Health Scorecard will be provided with workplace health program planning and implementation tools. Participating employers may also receive technical assistance and training.

The CDC Worksite Health Scorecard is a voluntary, self-reported online survey that will be available to any public/private employer regardless of size, industry sector, or geographic location. The online system will require the creation of a user account with employer contact information so that employer representatives can complete the CDC Worksite Health Scorecard instrument; receive an immediate feedback report on existing program gaps; and benchmark themselves against other employers using the CDC Worksite Health Scorecard. It is recommended that the CDC Worksite Health Scorecard be repeated on an annual basis.

CDC is requesting Office of Management and Budget (OMB) approval by March 2014. The information to be collected will allow CDC to register employers and permit access to the survey and other resources such as the user manual, feedback reports, and tools for employers. CDC will also use the information to generate benchmark reports for comparing the number of workplace health strategies an individual employer has implemented to the number of strategies implemented by other employers using the CDC Worksite Health Scorecard, to identify success drivers for building and maintaining successful workplace health programs, to raise awareness and knowledge among employers about science-based workplace health program strategies, to develop additional tools and resources for employers, and to evaluate the impact of the CDC Worksite Health Scorecard on the adoption of workplace health programs, policies and environmental supports.

OMB approval is requested for three years. CDC estimates that 600 employers will complete the CDC Worksite Health Scorecard per year. Participation is voluntary and there are no costs to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Employers	CDC Worksite Health Scorecard	600	1	30/60	300
Total					300

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–26436 Filed 11–4–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-14–0210]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to CDC, LeRoy Richardson, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products (OMB No. 0920–0210, exp. 2/28/2014)—Extension—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarette smoking is the leading preventable cause of premature death and disability in the United States. Each year, more than 443,000 premature deaths occur as the result of diseases related to cigarette smoking. The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (CSEA, 15 U.S.C. 1336 or Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of HHS with a list of ingredients added to tobacco in the manufacture of cigarettes. The legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate) discussing the health effects of these ingredients.

HHS has delegated responsibility for implementing the CSEA's ingredient reporting requirements to CDC's OSH. OSH has collected ingredient reports on cigarette products since 1986.

Respondents are commercial cigarette manufacturers, packagers, or importers, or their designated representatives. Respondents are not required to submit specific forms; however, they are required to submit a list of all ingredients used in their products. CDC requires the ingredient report to be submitted by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report. The estimated burden per response is 6.5 hours. The total estimated annualized burden hours are 501.

Ingredient reports for new products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to OSH by mailing a written report on the respondent's letterhead, which may be accompanied by a compact disk (CD), three-inch floppy disk, or thumb drive. Annual ingredient reports should be mailed to: Office on Smoking and Health, Attention: FCLAA Program Manager, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS F–79 Atlanta, GA 30341–3717. Electronic mail submissions are not accepted. Upon receipt and verification of the annual ingredient report, OSH issues a Certificate of Compliance to the respondent.

There are no costs to respondents other than their time. Office of Management and Budget (OMB) approval is requested for three years.

Estimated Annualized Burden Hours

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Cigarette Manufacturers, Packagers, and Importers	77	1	6.5	501

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–26469 Filed 11–4–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3110–FN]

Medicare & Medicaid Programs: Application From the Accreditation Commission for Health Care for Continued CMS-Approval of Its Hospice Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Commission for Health Care (ACHC) for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs.

DATES: *Effective:* This final notice is effective November 27, 2013 through November 27, 2019.

FOR FURTHER INFORMATION CONTACT: Valarie Lazerowich, (410) 786–4750. Cindy Melanson, (410) 786–0310. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met. Section 1861(dd) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospices.

Generally, to enter into an agreement, a hospice must first be certified by a state survey agency as complying with the conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements. However, there is an alternative to surveys by state agencies. Certification by a nationally recognized accreditation program can substitute for ongoing state review.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, CMS will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to have met the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions.

Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The ACHC's current term of approval for their hospice accreditation program expires November 27, 2013.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On May 3, 2013, we published a proposed notice in the **Federal Register** (78 FR 26036) announcing Accreditation Commission for Health Care's request for approval of its hospice accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.4 and § 488.8, we conducted a review of ACHC's application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of ACHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its surveyors; (4) ability to investigate and respond appropriately to complaints against accredited facilities; and (5) survey review and decision-making process for accreditation.
- The comparison of ACHC's accreditation requirements to our current Medicare hospice conditions of participation.
- A documentation review of ACHC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing survey or training.

++ Comparability of ACHC's processes to those of state survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ ACHC's procedures for monitoring hospices out of compliance with ACHC's program requirements. The monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

++ ACHC's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of staff and other resources.

++ ACHC's ability to provide adequate funding for performing required surveys.

++ ACHC's policies with respect to whether surveys are announced or unannounced.

++ ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the May 3, 2013 proposed notice also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare conditions of participation for hospices. We received no comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared ACHC's hospice requirements and survey process with the Medicare conditions of participation and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of ACHC's hospice application, which were conducted as described in section III of this final notice, yielded the following:

- To meet the requirement at § 418.3(2), ACHC amended its crosswalk and standards to accurately reflect the current regulatory language that the attending physician is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.
- To meet the requirement at § 418.24(c)(3), ACHC amended its preamble to accurately reflect the current regulatory language that an election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual is not discharged from the hospice under the provisions in § 418.26.
- To meet the requirement at § 418.70, ACHC revised its standard to accurately address the care/services provided directly and those provided under arrangement.
- To meet the requirement at § 418.76(c), ACHC revised its standards to address the requirement that hospice aide services can be provided by an individual only after the successful completion of a competency evaluation program.
- To meet the requirement at § 418.78, ACHC revised its standard to reflect that the hospice must use volunteers in defined roles.
- To meet the requirement at § 418.104(d), ACHC revised its standard to reflect that if the hospice discontinues operation, hospice policies must provide for retention and storage of clinical records.
- To meet the requirement at § 418.106(e)(2)(i)(A), ACHC revised its standard to reflect that the hospice will provide a copy of the hospice's written policies and procedures on the management and disposal of controlled drugs to the patient representative.
- To meet the requirement at § 418.106(e)(2)(i)(B), ACHC revised its standard to reflect the discussion of the hospice's policies and procedures managing the safe use and disposal of controlled drugs to the patient representative.
- To meet the requirement at § 418.108(b)(1)(ii), ACHC revised its standard to allow for pain control, symptom management, and respite purposes in a Medicare or Medicaid-certified nursing facility, in addition to a Medicare or Medicaid-certified hospice or hospital that also meets the standards specified in § 418.110(e).
- To meet the requirement at § 418.110(n)(2)(i), ACHC revised its standard to address techniques to identify staff behaviors, events, and environmental factors that may trigger circumstances that require the use of a restraint or seclusion.
- To meet the requirement at § 418.112(c), ACHC provided a clear definition of the management of crisis situations and temporary emergencies.
- To meet the requirement at § 418.202(g), ACHC amended its preamble to accurately reflect the requirement that homemaker services may include assistance in maintenance of a safe and healthy environment and services to enable the individual to carry out the treatment plan.
- To meet the requirements of Appendix M of the SOM, ACHC instituted processes and audits to ensure that the Medicare Enrollment Application Form CMS–855A is verified by the assigned Medicare Administrative Contractor (MAC) prior to conducting an initial survey.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we have determined that ACHC's hospice accreditation program requirements meet or exceed our requirements. Therefore, we approve ACHC as a national accreditation organization for hospices that request participation in the Medicare program, effective November 27, 2013 through November 27, 2019.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: October 29, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–26374 Filed 11–4–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: DRA TANF Final Rule.

OMB No.: 0970–0338.

Description: When the Deficit Reduction Act of 2005 (DRA) reauthorized the Temporary Assistance for Needy Families (TANF) program, it imposed a new data requirement that States prepare and submit data verification procedures and replaced other data requirements with new versions including: the TANF Data Report, the SSP–MOE Data Report, the Caseload Reduction Documentation Process, and the Reasonable Cause/Corrective Compliance Documentation Process. The Continuing Appropriations Act, 2014 (Pub. L. 113–46) provides federal funds to operate Temporary Assistance for Needy Families (TANF) programs in the states, DC, Guam, Puerto Rico, the U.S. Virgin Islands, and for approved federally recognized tribes and Alaskan Native Villages through January 15, 2014. We are proposing to continue these information collections without change.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Preparation and Submission of Data Verification Procedures §§ 261.60—261.63	54	1	640	34,560
Caseload Reduction Documentation Process, ACF–202 §§ 261.41 & 261.44	54	1	120	6,480
Reasonable Cause/Corrective Compliance Documentation Process §§ 262.4, 262.6, & 262.7; § 261.51	54	2	240	25,920
TANF Data Report Part 265	54	4	2,201	475,416
SSP–MOE Data Report Part 265	29	4	714	82,824

Estimated Total Annual Burden Hours: 625,200.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–26383 Filed 11–4–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1213]

Draft Guidance for Industry: Use of Donor Screening Tests To Test Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products for Infection With Treponema pallidum (Syphilis); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Use of Donor Screening Tests to Test Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) for Infection with *Treponema pallidum* (Syphilis),'' dated October 2013. The draft guidance document provides establishments that make donor eligibility determinations for donors of HCT/Ps (HCT/P Establishments), with updated recommendations concerning donor testing for evidence of *Treponema pallidum (T. pallidum*) infection, the etiologic agent of syphilis. HCT/P Establishments must, as required under Federal regulations, test a donor specimen for evidence of *T. pallidum* infection using appropriate FDA-licensed, approved, or cleared donor screening tests, in accordance with the manufacturer's instructions, unless an exception to this requirement applies. The draft guidance clarifies that FDA does not consider diagnostic tests or pre-amendment devices (which have not been licensed, approved, or cleared) to be adequate for use in donor testing for *T. pallidum* infection under the criteria specified in Federal regulations. The recommendations in this guidance, when finalized, will supersede those recommendations for testing HCT/P donors for evidence of *T. pallidum* infection contained in the document entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated August 2007.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 3, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Use of Donor Screening Tests to Test Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) for Infection with *Treponema pallidum* (Syphilis),'' dated October 2013. The draft guidance document provides HCT/P Establishments with

updated recommendations concerning donor testing for evidence of *T. pallidum* infection. HCT/P Establishments must, as required under § 1271.80(a) and (c) (21 CFR 1271.80(a) and (c)), test a donor specimen for evidence of infection due to *T. pallidum* using appropriate FDA-licensed, approved, or cleared donor screening tests, in accordance with the manufacturer's instructions, unless an exception to this requirement applies under 21 CFR 1271.90. The draft guidance clarifies that FDA does not consider diagnostic tests or pre-amendment devices (which have not been licensed, approved, or cleared) to be adequate for use in donor testing for *T. pallidum* infection under the criteria specified in § 1271.80(c). FDA will no longer exercise enforcement discretion that permits the use of diagnostic syphilis tests or pre-amendments devices for use as an HCT/P donor screening test because the wide availability of FDA-licensed, approved, or cleared test systems with an indication for use in donor screening no longer supports such enforcement discretion.

In the **Federal Register** of February 28, 2007 (72 FR 9007), FDA announced the availability of the guidance entitled ''Guidance for Industry: Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps),'' dated February 2007. FDA issued a revised version of this guidance under the same title, dated August 2007 (hereafter referred to as the 2007 Donor Eligibility guidance). The draft guidance announced in this notice, when finalized, will supersede the recommendations for testing HCT/P donors for *T. pallidum* that were contained in the 2007 Donor Eligibility guidance.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: October 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–26397 Filed 11–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Subcommittee—A.

Date: November 21, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18J, Bethesda, MD 20892–4874, 301–594–2773, *laffanjo@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Subcommittee—B.

Date: November 22, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–4874, 301–594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26435 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Office of Research Infrastructure Programs Special Emphasis Panel, October 15, 2013, 08:00 a.m. to October 15, 2013, 05:30 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD, 20892, which was published in the **Federal Register** on September 16, 2013, 78 FR 56903.

The meeting date is changed from October 15, 2013 to November 14, 2013. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26414 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 17, 2013, 12:00 p.m. to October 17, 2013, 05:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, which was published in the **Federal Register** on September 17, 2013, 78 FR 57167.

Meeting will be held on November 26, 2013 from 1:00 p.m. until 5:00 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 31, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26441 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Workshop

Notice is hereby given of a workshop convened by the Interagency Autism Coordinating Committee (IACC).

The purpose of the 2013 IACC Strategic Plan Update Workshop is to convene IACC members and invited subject matter and community experts to discuss updates on scientific research, services, policy that may be relevant to the IACC's efforts to develop a 2013 update of the IACC Strategic Plan for Autism Spectrum Disorder Research. The workshop will be open to the public and accessible by live webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open.

Date: November 15, 2013.

Time: 8:30 a.m. to 5:00 p.m. Eastern Time.

Agenda: The workshop will feature discussions between IACC members and external subject matter and community experts regarding updates from the field and from the community that the committee may consider when developing the 2013 update of the IACC Strategic Plan.

Place: National Institutes of Health, 1 Center Drive, Building 1, Conference Room—Wilson Hall, Bethesda, MD 20982.

Conference Call Access: Phone number: 888–603–9744. Access code: 4649252.

Webcast Live: http://videocast.nih.gov/.

Cost: The meeting is free and open to the public.

Registration: Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis. To register, please visit *http://iacc.hhs.gov/events.*

Public Comment Deadlines

Notification of intent to present oral comments: Friday, November 8, 2013 by 5:00 p.m. ET.

Submission of written/electronic statement for oral comments: Tuesday, November 12, 2013 by 5:00 p.m. ET.

Final Deadline for Submission of written comments: Tuesday, November 12, 2013 by 5:00 p.m. ET.

Please note: The NIMH Office of Autism Research Coordination (OARC) anticipates that written public comments received by the deadline of 5:00 p.m. ET, Tuesday, November 12, 2013 will be presented to the Committee prior to the November 15th workshop for the Committee's consideration. Any written comments received after the November 12, 2013 deadline (between November 13–14, 2013) will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies.

Access: Medical Center Metro Station (Red Line). On-site parking is available for a fee, but very limited. Vehicles entering the NIH campus are subject to security inspections, and visitors must present photo identification for NIH campus access.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182a, Rockville, MD 20852, Phone: (301)–443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Public Comments

Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5:00 p.m. ET on Friday, November 8, 2013, with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral presentation/statement including a brief description of the organization represented by 5:00 p.m. ET on Tuesday, November 12, 2013. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments on behalf of that organization and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5:00 p.m. ET on Tuesday, November 12, 2013. The comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. NIMH anticipates written public comments received by 5:00 p.m. ET, Tuesday, November 12, 2013 will be presented to the Committee prior to the meeting for the Committee's consideration. Any written comments received after the November 12, 2013 deadline (between November 13–14, 2013) will be provided to the Committee either before or after the meeting, depending on the volume of comments received and the time required to process them in accordance with privacy regulations and other applicable Federal policies. All written public comments and oral public comment statements received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

Core Values

In the 2009 IACC Strategic Plan, the IACC listed the ''Spirit of Collaboration'' as one of its core values, stating that, ''We will treat others with respect, listen to diverse views with open minds, discuss submitted public comments, and foster discussions where participants can comfortably offer opposing opinions.'' In keeping with this core value, the IACC and the NIMH Office of Autism Research Coordination (OARC) ask that members of the public who provide public comments or participate in meetings of the IACC also seek to treat others with respect and consideration in their communications

and actions, even when discussing issues of genuine concern or disagreement.

Remote Access

This workshop will also be open to the public through a conference call number and live webcast on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the discussion but will not be heard. If you experience any technical problems with the webcast or conference call, please send an email to *helpdeskiacc@gmail.com* or by phone at 415–652–8023.

Special Accommodations

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the contact person listed on this notice at least 5 days prior to the meeting.

Security

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Also as a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule is subject to change.

Information about the IACC is available on the Web site: *http://iacc.hhs.gov/about/index.shtml.*

Dated: October 30, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26418 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Training and Workforce Development Subcommittee—D.

Date: November 7, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892–4874, 301–594–2771, *johnsonrh@nigms.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Training and Workforce Development Subcommittee—C.

Date: November 8, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12, Bethesda, MD 20892–4874, 301–594–3998, *trempemo@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26419 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 17, 2013, 12:00 p.m. to October 17, 2013, 04:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, which was published in the **Federal Register** on September 17, 2013, 57167 FR 180.

Meeting will be held on December 19, 2013 from 12:00 p.m. until 4:00 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26431 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neuroscience of Aging Review Committee, October 10, 2013, 04:00 p.m. to October 11, 2013, 02:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on August 23, 2013, 52552 FR 164.

Meeting will be held on December 20, 2013 from 10:00 a.m. until 5:00 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26428 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Peer Review of SCORE Grant Applications.

Date: November 15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.22, Bethesda, MD 20892, 301–594–3663, *shinako.takada@nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99 Grant Applications.

Date: November 19, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18I, Bethesda, MD 20892, 301–594–6904, *horowitr@mail.nih.gov.*

This meeting notice is being published less than 15 days in advance of the meeting due to the Government shutdown of October 2013.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26421 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (Cycle 15 NExT).

Date: December 11, 2013.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31 Conference Room 6C06, Bethesda, MD 20892.

Contact Person: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44 Bethesda, MD 20892, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Joseph Tomaszewski, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–6711, *tomaszej@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26426 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Office of Research Infrastructure Programs Special Emphasis Panel, October 08, 2013, 08:00 a.m. to October 09, 2013, 05:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852, which was published in the **Federal Register** on September 16, 2013, 78 FR 56903.

The dates of the meeting are changed from October 8–9, 2013 to December 10–12, 2013 and changed from an in-person meeting to internet assistant review. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26432 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–OD13–006 Instrumentation: Instrumentation Replacement Due to Superstorm Sandy.

Date: November 13, 2013.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301)451–1323, *assamunu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Synthetic and Biological Chemistry B.

Date: November 21, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kathryn M Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040N, MSC 7806, Bethesda, MD 20892, 301–408–9333, *koellerk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Molecular Imaging and Probe Development Overflow SEP.

Date: November 24, 2013.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301)435–1174, *williamsdl2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences

Date: December 3–4, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martha Garcia, Ph.D., Scientific Reviewer Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, Bethesda, MD 20892, 301–435–1243, *garciamc@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS Innovative Research Applications.

Date: December 3–4, 2013.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Child Psychopathology and Developmental Disabilities

Date: December 3, 2013.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Chromosome Rearrangements and Congenital Abnormalities.

Date: December 4, 2013.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Safe and Effective Instruments and Devices for Use in Neonatal and Pediatric Care Settings. PARs: PAR13–090 and PAR 13–091

Date: December 4, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics, and Drug Discovery.

Date: December 5, 2013.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26423 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Motor Function, Speech and Rehabilitation Study Section, October 21, 2013, 08:00 a.m. to October 21, 2013, 06:00 p.m., The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024, which was published in the **Federal Register** on September 26, 2013, 78 FR 187 Pgs. 59361–59362.

The meeting will be held at the Renaissance Dupont Circle Hotel, 1143 New Hampshire Ave. NW., Washington, DC 20037. The meeting will start on

December 16, 2013 at 8:00 a.m. and end December 16, 2013 at 6:00 p.m. The meeting is closed to the public.

Dated: October 30, 2013.

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26425 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MIDAS Information Technology Resources (U24).

Date: November 22, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 12An.18K, Bethesda, MD 20892.

Contact Person: Brian R. Pike, PhD., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18Bethesda, MD 20892, 301–594–3907, *pikebr@ mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review T32 Grant Applications.

Date: November 26, 2013.

Time: 2:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Rebecca H. Johnson, PhD., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@ nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26417 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Nursing and Related Clinical Sciences Study Section, October 10, 2013, 08:00 a.m. to October 11, 2013, 06:00 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on September 12, 2013, 78 FR 56239.

The meeting will be held at the Residence Inn Capital View, 2850 South Potomac Ave., Arlington, VA 22202. The meeting will start on November 21, 2013 at 08:00 a.m. and end on November 22, 2013 at 05:00 p.m. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26430 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neuroendocrinology, Neuroimmunology, Rhythms and Sleep Study Section, October 03, 2013, 08:00 a.m. to October 04, 2013, 05:30 p.m., Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202, which was published in the **Federal Register** on September 05, 2013, 78 FR 54664–54665.

The meeting will be held at the Hotel Monaco Baltimore, 2 North Charles Street, Baltimore, MD 21201 on November 22, 2013, starting at 08:00 a.m. and ending at 07:00 p.m. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26427 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Ancillary Studies in Huntington's Disease.

Date: November 5, 2013.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD., Scientific Review Officer, Scientific Review Branch, Division of Extramural, Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 30, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26415 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 2, 2013, 11:00 a.m. to October 2, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on December 02, 2013, 78 FR 54664.

The meeting will be held on December 2, 2013 from 08:00 a.m. to 05:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26429 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, October 16, 2013, 02:00 p.m. to October 16, 2013, 05:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, which was published in the **Federal Register** on September 25, 2013, 59042–59043 FR 186.

Meeting will be held December 12, 2013 from 12:00 p.m. until 4:00 p.m. at the National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. The meeting is closed to the public.

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26433 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Office of Research Infrastructure Programs Special Emphasis Panel, October 09, 2013, 08:00 a.m. to October 10, 2013, 05:30 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, which was published in the **Federal Register** on September 16, 2013, 78 FR 56903.

The dates of the meeting are changed from October 9–10, 2013 to November 6–7, 2013. The meeting is closed to the public.

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26434 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for development resources for potential new cancer diagnostics. The outcome of the evaluation will be information for consideration by an internal NCI committee that will decide whether NCI/DCTD should support the requests and make available contract resources for development of the potential diagnostics to improve the treatment of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Assay Development Program.

Date: December 3, 2013.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: To evaluate requests for development resources for potential new diagnostics for cancer.

Place: NCI Shady Grove, 9609 Medical Center Drive, Room 3W030, Rockville, Maryland 20850.

Contact Person: Tracy G. Lively, Ph.D., Cancer Diagnosis Program, 9609 Medical Center Drive, Room 4W420, Rockville, MD 20850–9730, Tel: 240–276–5944, *livelyt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: *October 30, 2013.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26424 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB P41 Interface Meeting 2014/05.

Date: March 4, 2014.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: October 30, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26416 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Subcommittee A—Cancer Centers, December 5, 2013, 08:00 a.m. to December 6, 2013, 01:00 p.m., Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814, which was published in the **Federal Register** on October 28, 2013, 78FR64222.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for January 13–14, 2013. The meeting times and location remain the same. The meeting is closed to the public.

Dated: October 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26422 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 15, 2013, 4:00 p.m. to October 16, 2013, 5:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on September 11, 2013, 78 FR 55750.

Due to the absence of either an FY 2014 appropriation or Continuing Resolution for the Department of Health and Human Services, the meeting is rescheduled for December 10–11, 2013 from 2:00 p.m. to 5:00 p.m. and the meeting location has changed to Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202. The meeting is closed to the public.

Dated: *October 30, 2013.*

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–26420 Filed 11–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0029; OMB No. 1660–0005]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before December 5, 2013.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or email address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Flood Insurance Program Claims Forms.

Type of information collection: Revision of a currently approved information collection.

Form Titles and Numbers: FEMA Form 086–0–6; Worksheet-Content-Personal Property; 086–0–7; Worksheet—Building; 086–0–8; Worksheet—Building (Continued); 086–0–9; Proof of Loss; 086–0–10; Increased Cost of Compliance Proof of Loss; 086–0–11; Notice of Loss; 086–0–12; Statement as to Full Cost of Repair or Replacement under the Replacement Cost Coverage, Subject to Terms and Conditions of this Policy; 086–0–13; National Flood Insurance Program Preliminary Report; 086–0–14; National Flood Insurance Program Final Report; 086–0–15; National Flood Insurance Program Narrative Report; 086–0–16; Cause of Loss and Subrogation Report; 086–0–17; Manufactured (Mobile) Home/Travel Trailer Worksheet; 086–0–18; Manufactured (Mobile) Home/Travel Trailer Worksheet (Continued); 086–0–19; Increased Cost of Compliance (ICC) Adjusters Report; 086–0–20; Adjuster Preliminary Damage Assessment; 086–0–21; Adjuster Certification Application; NFIP Claims Appeals Process.

Abstract: The National Flood Insurance Program (NFIP) appeal process establishes a formal mechanism to allow NFIP policyholders to appeal the decisions of any insurance agent, adjuster, insurance company, or any Federal Emergency Management Agency (FEMA) employee or contractor, in cases or unsatisfactory decisions on claims, proof of loss, and loss estimates.

Affected Public: Individuals or households; Farms; and Businesses or other for profit.

Estimated Number of Respondents: 97,242.

Estimated Total Annual Burden Hours: 73,815.

Estimated Cost: There are no recordkeeping, capital, start-up or maintenance costs associated with this information collection.

Dated: October 29, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–26395 Filed 11–4–13; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–19]

Announcement of Funding Awards for the OneCPD Plus: Technical Assistance and Capacity Building Under the Transformation Initiative Program (OneCPD+) Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the OneCPD *Plus:* Technical Assistance and Capacity Building under the Transformation Initiative program (OneCPD+) for Fiscal Year 2013. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Julie Hovden, Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–4496 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, visit the HUD Web site at *www.hud.gov* or the OneCPD Resource Exchange at *www.onecpd.info.*

SUPPLEMENTARY INFORMATION: The purpose of Fiscal Year 2013 OneCPD+ Technical Assistance and Capacity Building program is to provide state government, local government and nonprofit recipients of federal community development, affordable housing, economic development and special needs funding with the assessment tools and technical and capacity building assistance needed to fully understand their local market conditions, to increase their capacity to successfully carry out federal assistance programs while leveraging other public and private resources, and to achieve positive and measurable outcomes. Under OneCPD+, technical assistance will involve the delivery of expert statutory, regulatory, and technical support that improves the program knowledge, skills and capacity of HUD's customers and their partners. Capacity building efforts will be directed at advancing the efficiency and performance of customers and their partners in the administration of federal affordable housing, community and economic development programs, the leveraging of other resources and the furthering of key Departmental objectives, including but not limited to, energy efficiency and green building.

The competition was announced in the NOFA published on June 24, 2013 (FR–5700–N–19) and closed on July 31, 2013. The NOFA allowed for approximately $16.5 million for OneCPD+ awards, however, additional funds became available and awarded. Applications were rated and selected for funding on the basis of selection criteria contained in the NOFA. For the Fiscal Year 2013 competition, 10 awards totaling $18,701,910 were awarded to 10 technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: October 28, 2013.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

FISCAL YEAR 2013

[OneCPD Plus: Technical Assistance and Capacity Building Awards]

Recipient	City	State	Amount
Abt Associates, Inc	Cambridge	MA	$1,300,000
American Institutes for Research	Washington	DC	1,100,000
Technical Assistance Collaborative, Inc	Boston	MA	2,000,000
Cloudburst Group	Landover	MD	2,500,000
Econometrica, Inc	Bethesda	MD	1,500,000
ICF Incorporated, L.L.C	Fairfax	VA	5,301,910
Corporation for Supportive Housing	New York	NY	750,000
Capital Access, Inc	Philadelphia	PA	750,000
CVR Associates, Inc	Tampa	FL	1,500,000
Enterprise Community Partners	Columbia	MD	2,000,000
Total			18,701,910

[FR Doc. 2013–26470 Filed 11–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5700–FA–06]

Announcement of Funding Awards for the McKinney-Vento HMIS Technical Assistance, Fiscal Year 2013

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the McKinney-Vento HMIS Technical Assistance program for Fiscal Year 2013. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Julie Hovden, Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–4496 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov* or OneCPD Resource Exchange at *www.onecpd.info.*

SUPPLEMENTARY INFORMATION: The Fiscal Year 2013 McKinney-Vento HMIS Technical Assistance program was designed to achieve the highest level of performance and results for the implementation of Homeless Management Information Systems in each Continuum of Care, including operation and management of the software, and data collection for Annual Performance Reports (APRs) and the Annual Homeless Assessment Report (AHAR). Information about HMIS is available at *www.hud.gov* and *www.onecpd.info.*

The competition was announced in the fiscal year (FY) 2013 McKinney-Vento HMIS Technical Assistance (HMIS–TA) NOFA published April 17, 2013 (FR–5700–N–06) and closed on May 21, 2013. The NOFA allowed for up to $6.8 million for technical. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the Fiscal Year 2013 competition, 5 awards totaling $6,633,858 were awarded to 5 distinct technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: October 28, 2013.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

FISCAL YEAR 2013

[McKinney-Vento HMIS Technical Assistance and Research (HMIS–TA)]

Recipient	City	State	Amount
Abt Associates, Inc	Cambridge	MA	$2,633,858
American Institutes for Research	Washington	DC	750,000
Cloudburst Group	Landover	MD	1,750,000
ICF Incorporated, L.L.C	Fairfax	VA	750,000
Training & Development Associates, Inc	Laurinburg	NC	750,000
Total			6,633,858

[FR Doc. 2013–26476 Filed 11–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR.5A311.IA000514]

Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public webinar meeting on November 20, 2013. The Commission expects that this will be its last public meeting. During the public meeting, the Commission will approve the August 2013 public meeting summary, approve the Commission recommendations, and take public comments.

DATES: The Commission's public webinar meeting will begin at 4:30 p.m. and end at 5:30 p.m. Eastern Time on November 20, 2013. Members of the public who wish to participate should register by November 19, 2013 (see **SUPPLEMENTARY INFORMATION** for registration instructions).

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Sarah Harris, Chief of Staff to the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street NW., Room 4141, Washington, DC 20240; or email to *Sarah.Harris@bia.gov.*

SUPPLEMENTARY INFORMATION: The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission is completing a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and will offer recommendations to the Secretary of the Interior of how to improve in the future. During the past two-year period, the Commission has been working to:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from these Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement such improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding any such termination.

On Wednesday, November 20, 2013, the Commission will hold its last public meeting. The following items will be on the agenda:

- Welcome, introductions and agenda review;
- Approve August 2013 public meeting summary;
- Review and approve Commission recommendations;

- Public comments; and
- Adjourn.

Members of the public who wish to participate in the November 20, 2013, public meeting (which will be held by webinar) should register at the following Web site by November 19, 2013: *https://www1.gotomeeting.com/register/774101625.* Upon your registration, instructions on how to join the meeting will be sent to your email address. The webinar is limited to 100 participants.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm.* All meetings are open to the public.

Dated: October 30, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–26369 Filed 11–4–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2013–N213; FXES11120100000–134–FF01E00000]

Notice of Intent To Prepare a Draft Environmental Impact Statement on a Proposed Incidental Take Permit for the Na Pua Makani Project, Kahuku, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to conduct public scoping under the National Environmental Policy Act (NEPA) to gather information to prepare a draft environmental impact statement (DEIS) related to an incidental take permit (ITP) application that Champlin Hawaii Wind Holdings, LLC (Champlin) intends to submit to the Service pursuant to the requirements of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The proposed permit would authorize the incidental take of listed species caused by the construction and operation of Champlin's proposed Na Pua Makani Project (Project) near Kahuku, Hawaii, for production of wind-generated electrical energy on the island of Oahu. In accordance with ESA requirements for an ITP, Champlin is preparing a habitat conservation plan (HCP) to minimize and mitigate the impacts of take of the covered species likely to be caused by the Project. The DEIS will address the impacts of, and alternatives to, issuance of the ITP and implementation of the HCP to determine if these actions may significantly affect the human environment. This notice initiates the public scoping period for the DEIS during which we invite other agencies and the public to attend a public meeting and submit oral and written comments that provide suggestions and information on the scope of issues and alternatives that should addressed in the DEIS.

DATES: A public scoping meeting will be held on November 13, 2013, from 5:30 p.m. to 9:00 p.m. at the Kahuku Village Association Community Center, 56576 Kamehameha Highway, Kahuku, Hawaii 96731. The public is invited to provide oral and written comments at this meeting related to our preparation of a DEIS for this proposed permit action. To ensure consideration of written comments, please send your written comments on or before December 5, 2013.

ADDRESSES: Comments concerning the issuance of the ITP, the development of the Na Pua Makani HCP and the preparation of the associated DEIS should be identified as such, and may be submitted by one of the following methods:

- *Email: NaPuaMakanihcp@fws.gov.* Include ''Na Pua Makani HCP and DEIS'' in the subject line of the message;
- *U.S. Mail:* Loyal Mehrhoff, Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850;
- *In-Person Drop-off, Viewing, or Pickup:* Written comments will be accepted at the public meeting on November 13, 2013, or can be dropped off during regular business hours at the above address on or before December 5, 2013; or
- Written comments can also be faxed (*Fax:* (808) 792–9581, Attn.: Loyal Mehrhoff) to the Service on or before December 5, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Loyal Mehrhoff or Aaron Nadig, U.S. Fish and Wildlife Service (see **ADDRESSES** above); by telephone (808) 792–9400; or by email at *NaPuaMakanihcp@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meeting should contact Loyal Mehrhoff or Aaron Nadig (see **FOR FURTHER INFORMATION CONTACT** above). Please note that the meeting location is accessible to wheelchair users. To allow sufficient time to process requests, please call no later than 1 week in advance of the meeting.

Background

Section 9 of the ESA and the implementing regulations for the ESA in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). The term ''harass'' is defined in the regulations as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering'' (50 CFR 17.3). The term ''harm'' is defined in the regulations as ''an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering'' (50 CFR 17.3).

Under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. In addition to meeting other criteria, an ITP must not jeopardize the continued existence of federally listed threatened or endangered species. Section 10(a)(1)(B) of the ESA contains provisions for issuing such ITPs to non-Federal entities for the take of endangered and threatened species, provided the permit and related conservation plan meet the following criteria: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant ensures that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to a proposed project is developed and considered in the Service's environmental review. Alternatives considered for analysis in an EIS for an HCP may include, but are not limited to: Variations in the scope of covered activities; variations in the location, amount, and type of conservation activities; variations in permit duration; or a combination of these elements.

Proposed Action

Champlin's proposed Project would be located on private and public lands near the town of Kahuku, County of Honolulu, on the island of Oahu, Hawaii. The proposed Project would provide up to 45 megawatt capacity of renewable wind-generated electrical energy to the island of Oahu. A portion of the Project would be located on State of Hawaii lands managed by the Department of Land and Natural Resources (DLNR). The proposed Project's location is adjacent to the existing Kahuku Wind Farm. The Project would be completed in two phases. Phase 1 is anticipated to include approximately eight turbines and phase 2 is anticipated to include approximately six turbines. Supporting infrastructure for the proposed Project may include access roads, wind turbine assembly lay down areas, overhead and underground transmission and collector lines, and may also include an on-site substation and an operations and maintenance building.

Champlin proposes to develop an HCP as part of their application for an ITP under section 10(a)(1)(B) of the ESA. The proposed HCP will cover potential take of the federally-listed species discussed below that is incidental to activities associated with the construction, operation, maintenance, and decommissioning of the Project. The HCP will include measures to minimize and mitigate impacts to covered species and their habitats.

The proposed Federal action would be the issuance of an ITP to Champlin to authorize incidental take of the covered species, subject to compliance with and implementation of Champlin's HCP for the Project. We anticipate Champlin to request ITP coverage for a period of 20 years.

Covered Species

Champlin intends to seek incidental take coverage for the following five federally-listed threatened and endangered species:

- Newell's shearwater (*Puffinus auricularis newelli*)—Threatened;
- Hawaiian coot (*Fulica americana alai*)—Endangered;
- Hawaiian common moorhen (*Gallinula chloropus sandvicensis*)—Endangered;
- Hawaiian stilt (*Himantopus mexicanus knudseni*)—Endangered; and
- Hawaiian hoary bat (*Lasiurus cinereus semotus*)—Endangered.

The following State-listed endangered species may also be included as a covered species in Champlin's proposed HCP:

- pueo or Hawaiian short-eared owl (*Asio flammeus sandwichensis*).

The final list of covered species may include the above listed species, a subset, or additional species, based on the outcome of the planning process.

Public Scoping

The primary purpose of the scoping process is for the public to assist the Service in developing a DEIS for this proposed ITP action by identifying important issues and alternatives related to Champlin's proposed Project, to provide the public with a general understanding of the background of the proposed HCP and activities it would cover, and an overview of the NEPA process. In order to ensure that we identify a range of issues and alternatives related to the proposed ITP action, we invite comments and suggestions from all interested parties.

The scoping meeting will be held on November 13, 2013, from 5:30 p.m. to 9:00 p.m. at the Kahuku Village Association Community Center, 56576 Kamehameha Highway, Kahuku, Hawaii 96731. The meeting format will consist of an initial open house from 5:30 p.m. to 6:15 p.m. The open house format will provide an opportunity to learn about the proposed action, permit area, and the covered species. The open house will be followed by a formal presentation from 6:15 p.m. to 6:45 p.m. of the proposed action and a summary of the NEPA process, followed by an opportunity for oral comments from the public from 6:45 p.m. to 9:00 p.m. We will accept oral and written comments at the public meeting. A court reporter and an interpreter will be present if deemed necessary. You may also submit your comments and materials by one of the methods listed in the **ADDRESSES** section. Once the DEIS and draft HCP are complete and made available for review, there will be additional opportunity for public comment on the content of these documents through an additional public hearing and comment period.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, native Hawaiian organizations, industry, or any other interested party on this notice. We and the applicant will consider these comments in developing the DEIS and the draft HCP related to the proposed Project. We particularly seek comments on the following:

1. The direct, indirect, and cumulative effects that implementation of any reasonable alternative to the proposed Project could have on endangered or threatened species and other unlisted species and their habitats;
2. Other reasonable alternatives to the proposed permit action for issuance of an ITP for the proposed Project or that avoid the need for an ITP that should be considered and their associated effects;
3. Relevant biological data and additional information concerning the proposed covered species;
4. Current or planned activities in the subject area and their possible impacts on the proposed covered species;
5. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns;
6. The scope of covered activities, including potential avoidance, minimization, and mitigation measures for incidental take of the proposed covered species;
7. Appropriate monitoring and adaptive management provisions that should be included in the HCP; and
8. Identification of any other environmental issues that should be considered with regard to the proposed Project and permit action.

Public Availability of Comments

Comments and materials we receive in response to this notice and at the public meeting, as well as supporting documentation we use in preparing the DEIS under NEPA, will become part of the public record and will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office (see **ADDRESSES** above). Before including your address, phone number, email address, or other personal identifying information in your comment(s), you should be aware that

your entire comment(s)—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment(s) to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Environmental Review and Next Steps

The Service will conduct an environmental review to analyze the proposed action, along with other alternatives considered and the associated impacts of each for the development of the DEIS. The DEIS will include an analysis of impacts on each covered species and the range of alternatives to be addressed. The DEIS is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources, such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, the local economy, and environmental justice. Following completion of the environmental review, the Service will publish a notice of availability and request for public comments on the DEIS, Champlin's permit application, and the draft HCP. The DEIS and draft HCP are expected to be completed and available to the public in 2014.

Authority

The environmental review of this project will be conducted in accordance with the requirements of the NEPA of 1969, as amended (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR Parts 1500—1508), other applicable Federal laws and regulations, and applicable policies and procedures of the Service. This notice is being furnished in accordance with 40 CFR 1501.7 of the NEPA regulations to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the DEIS.

Dated: October 18, 2013.

Richard R. Hannan,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2013–26465 Filed 11–4–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000.DF0000 LXSS080C0000]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC scheduled a meeting from 10 a.m. to 3:00 p.m., Dec. 5, 2013, with a public comment period regarding matters on the agenda at 11:15 a.m. A specific agenda will be available before the meeting at *www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html.*

ADDRESSES: The meeting will be held at the Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, see address above; (970) 876–9008. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in northwestern Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Sage-Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited.

Dated: October 22, 2013.

John Mehlhoff,

BLM Colorado Acting State Director.

[FR Doc. 2013–25539 Filed 11–4–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL07000–L1420000–BJ0000–LXSIHRRB0000]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on December 5, 2013.

DATES: Protests of the survey must be filed before December 5, 2013 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, Supervisory Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5123 or (406) 896–5009, *jalexand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the BLM Lewistown Field Office, and was necessary to determine federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 25 N., R. 19 E.

The plat, in one sheet, representing the dependent resurvey of a portion of

the Sixth Standard Parallel North (south boundary), and a portion of the subdivisional lines and the subdivision of sections 28 and 33, and the survey of the west boundary of the Upper Missouri River Breaks National Monument, through sections 28 and 33, Township 25 North, Range 19 East, Principal Meridian, Montana, was accepted October 22, 2013.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C., Chap. 3.

Joshua F. Alexander,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2013–26464 Filed 11–4–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–13843; PX.DYOSE1318.00.1]

Final Environmental Impact Statement for the Restoration of the Mariposa Grove of Giant Sequoias, Yosemite National Park, Mariposa County, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, and consistent with the National Historic Preservation Act of 1966, the National Park Service (NPS) has prepared the Final Environmental Impact Statement for Restoration of the Mariposa Grove of Giant Sequoias (Mariposa Grove FEIS). The primary purpose of the proposed restoration is to restore dynamic natural processes that support the giant sequoias in Yosemite National Park and increase the resiliency of the Mariposa Grove to withstand a range of environmental stressors, and to improve the overall visitor experience in the Grove.

DATES: The National Park Service will execute a Record of Decision not sooner than 30 days after the date the U.S. Environmental Protection Agency publishes its notice of filing of the Mariposa Grove FEIS in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kimball Koch, Division of Project Management, Yosemite National Park, P.O. Box 700–W, 5083 Foresta Road, El Portal, CA 95318, (209) 379–1202. Request printed documents or CDs through email (*yose_planning@nps.gov*) or by telephone (209) 379–1202. The Mariposa Grove FEIS will be available at libraries in local communities. Electronic versions will be available online at *http://parkplanning.nps.gov/mariposagrove.*

Background: The Mariposa Grove encompasses about 500 mature giant sequoia trees that are among the oldest and largest living organisms in the world. These immense trees were so inspirational to early visitors that Congress passed legislation to permanently preserve the Mariposa Grove in the midst of the Civil War (Act of Congress, June 30, 1864). Comprehensive actions are needed to ensure that the Mariposa Grove continues to thrive and provide inspiration and enjoyment for future generations.

Range of Alternatives: The National Park Service developed the Mariposa Grove FEIS through consultation with traditionally associated American Indian tribes and groups, the State Historic Preservation Officer, and other federal and state agencies. Organizations and interested members of the public provided 334 public correspondences on the Draft EIS. The NPS conducted two public meetings during the public comment period, attended by about 90 people.

The Mariposa Grove FEIS identifies and evaluates a No Action Alternative (Alternative 1) and three action alternatives (Alternatives 2–4) to restore natural habitat within the Mariposa Grove and improve the visitor experience. Alternatives 2–4 propose comprehensive ecological restoration actions, including improvement of hydrologic flows, restored natural habitat, and improved visitor orientation and interpretation. Key distinctions among Alternatives 2–4 include the location of a new hub for public parking and visitor services, and the availability of shuttle service and commercial tram service to the Grove.

Alternative 1 (No Action) would continue current management and trends. The lower Mariposa Grove area would continue to serve as the primary arrival point and visitor information center. Existing buildings and infrastructure within the Mariposa Grove, including a commercial tram operation, would remain. The shuttle service connecting the overflow parking areas at Wawona to the South Entrance and the Grove would continue to operate.

Alternative 2 (South Entrance Hub) is the agency-preferred alternative. To allow for restoration of giant sequoia habitat, wetlands, and soundscapes within the Mariposa Grove, this alternative would relocate parking and the visitor information center to a primary transit hub and contact area near the South Entrance of Yosemite. A park shuttle would transport visitors two miles from the South Entrance to the lower Grove area, or visitors could hike to the Grove along a proposed new trail. Commercial tram operations would be removed from the Grove. Limited parking would be available in the lower Grove area during the off-season, weather permitting.

Alternative 3 (Grizzly Giant Hub) would provide for restoration of wetlands and giant sequoia habitat in the lower portion of the Mariposa Grove and construct a new parking and visitor information center near the Grizzly Giant tree. This alternative would require construction of a new bypass road to the new visitor hub and would eliminate the need for commercial tram and park shuttle operations.

Alternative 4 (South Entrance Hub with Modified Commercial Tram) would allow for restoration of wetlands, soundscapes, and giant sequoia habitat within the Mariposa Grove by relocating public parking and facilities out of the lower portion of the Grove to the South Entrance of Yosemite, as in Alternative 2. Alternative 4 would relocate the commercial tram operation to the South Entrance area and reduce the route and hours of operation within the upper Grove area to enhance sequoia habitat and improve the soundscape and overall visitor experience within the Grove. As in Alternative 2, parking would be relocated to the South Entrance, and visitors would use the park shuttle for the two-mile ride to the Grove. Limited off-season parking would be available in the lower Grove area, weather permitting.

Changes Incorporated in Final EIS: In response to the public comments received on the Draft EIS and new information derived from subsequent geo-technical studies, minor changes are incorporated into the Mariposa Grove FEIS in Alternative 2 and Alternative 4. These changes do not substantially alter the determinations of potential effects as disclosed in the Draft EIS. The changes include:

1. Reconfigure facilities at the South Entrance hub to accommodate additional parking (up to approximately 285 spaces) and flex-spaces to accommodate oversize vehicles.

2. Provide an off-season overflow parking area near the picnic area.

3. Increase the size of the buried water tank at South Entrance.

4. Explore additional options for the location of the septic system and leach field.

Decision Process: As noted above, not sooner than 30 days after the Environmental Protection Agency notice is published in the **Federal Register,** the National Park Service will prepare a Record of Decision. Notice of project approval through the signing of the Record of Decision will be published in the **Federal Register** by the National Park Service. Because this is a delegated EIS, the official responsible for approval of the project is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for project implementation is the Superintendent, Yosemite National Park.

Dated: September 13, 2013.

Cynthia L. Ip,

Acting Regional Director, Pacific West Region.

[FR Doc. 2013–26468 Filed 11–4–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for General Reclamation Requirements, has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 5, 2013, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via email to *OIRA_submission@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please refer to OMB control number 1029–0113 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or via email at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information found at 30 CFR Part 874. OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0113, and may be found in OSM's regulations at 874.10. Responses are required to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information for Part 874 was published on August 7, 2013 (78 FR 48188). No comments were received from that notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 874—General Reclamation Requirements.

OMB Control Number: 1029–0113.

Summary: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. The regulations at 30 CFR 874.17 require consultation between the Abandoned Mine Land (AML) agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 17 State regulatory authorities and Indian tribes.

Total Annual Responses: 17.

Total Annual Burden Hours: 1,411.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1029–0113 in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: *October 30, 2013.*

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–26463 Filed 11–4–13; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–498 and 731–TA–1213–1214 (Preliminary)]

Certain Steel Threaded Rod From India and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India and Thailand of certain steel threaded rod, provided for primarily in subheading 7318.15.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Government of India.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

On June 27, 2013, a petition was filed with the Commission and Commerce by All America Threaded Products Inc., Denver, Colorado; Bay Standard Manufacturing Inc., Brentwood, California; and Vulcan Threaded Products Inc., Pelham, Alabama, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of certain steel threaded rod from India and LTFV imports of certain steel threaded rod from Thailand. Accordingly, effective June 27, 2013, the Commission instituted countervailing duty investigation No. 701–TA–498 and antidumping duty investigation Nos. 731–TA–1213–1214 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 3, 2013 (78 FR 40170). The conference was held in Washington, DC, on July 18, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 12, 2013. The views of the Commission are contained in USITC Publication 4420 (August 2013), entitled *Certain Steel Threaded Rod from India and Thailand: Investigation Nos. 701 TA–498 and 731–TA–1213–1214 (Preliminary).*

Issued: October 30, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–26403 Filed 11–4–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Request by Organization for Accreditation of Non-Attorney Representative (Voluntary Form EOIR–31A)

ACTION: 60-Day notice.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following voluntary information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 6, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who elect to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Voluntary Collection.

(2) *Title of the Form/Collection:* Request by Organization for Accreditation of Non-Attorney Representative.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–31A.

Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who may choose to respond to this collection, as well as a brief abstract:* Primary: Non-profit organizations seeking accreditation of its representatives by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). Other: None. Abstract: This information collection will allow an organization to seek accreditation of a non-attorney representative to appear before EOIR and/or the Department of Homeland Security. The Form EOIR–31A will elicit, in a uniform manner, all of the required information for EOIR to determine whether a proposed representative meets the eligibility requirements for accreditation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 544 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,088 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: October 31, 2013.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2013–26449 Filed 11–4–13; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Juvenile Justice Reform and Reinvestment Initiative Stakeholder Survey Under OMB's Partnership Fund

ACTION: 30-Day notice.

The Department of Justice (DOJ), Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''thirty days'' until December 5, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kristen Kracke, (202) 616–3649, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection Back to Top

(1) *Type of information collection:* Original Web-based Survey

(2) *The title of the form/collection:* Juvenile Justice Reform and Reinvestment Initiative

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Milwaukee County, Wisconsin; Iowa; and Delaware Juvenile Justice Service Providers. Local government and Not-for-profit institutions, Business or other for-profit in each of these three jurisdictions will be affected.

Abstract: This survey is being conducted as a part of an evaluation of OJJDPs JJRRI Demonstration Program. In 2012, OJJDP commissioned a 36-month evaluation of the Juvenile Justice Reform and Reinvestment Initiative (JJRRI) Demonstration Program. The JJRRI Demonstration Program provides funds to three states and/or local administering agencies for juvenile justice to develop and implement an integrated set of evidence-based and cost-measurement tools that will enable them to make informed decisions about resources and services for juvenile-justice involved youth.

The Urban Institute (UI) is conducting a comprehensive evaluation of JJRRI to determine whether the initiative has had the intended effect of improving program- and cost-effectiveness. As part of this evaluation, UI will conduct two web-based surveys with key stakeholders at each site to measure changes in attitudes towards evidence-based practices as a result of the JJRRI Demonstration Program.

The main objective of this web-based survey is to measure juvenile justice stakeholder—agency leadership and staff—support for use and knowledge of Evidence-Based Practice's in the three sites selected to be JJRRI Demonstration Programs. Two surveys will be conducted by UI to measure stakeholder support and knowledge of evidence-based practices. The first survey will assess baseline attitudes of EBPs. The second survey will measure the extent to which context and attitudes change through the initiative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 480 respondents will complete a 20 minute questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 160 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3W–1407, Washington, DC 20530.

Dated: October 31, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–26462 Filed 11–4–13; 8:45 am]

BILLING CODE 4410–18–P

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Merit Systems Protection Board's Performance Review Board.

DATES: November 5, 2013.

FOR FURTHER INFORMATION CONTACT: Marion Hines at 202–254–4413 or *marion.hines@mspb.gov.*

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the current and new members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). William D. Spencer continues to serve as Chairman of the PRB. Susan M. Swafford is a new member of the PRB, and William L. Boulden continues to serve as a member of the PRB.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2013–26405 Filed 11–4–13; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–126]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held via Teleconference and Webex for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Tuesday, November 19, 2013, 11:00 a.m. to 5:00 p.m., Eastern Time

This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–779–4348, pass code 38250, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* meeting number 999 713 790, passcode *APS@Nov19.*

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—Astrophysics Division Update
—Presentation of Astrophysics Roadmap
—Reports from Program Analysis Groups: Exoplanet Exploration Program Analysis Group, Physics of the Cosmos Program Analysis Group, and Cosmic Origins Program Analysis Group

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration and Space Administration.

[FR Doc. 2013–26445 Filed 11–4–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 671 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 5, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at the above address or *ACApermits@nsf.gov* or (703) 292–7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2014–024

1. *Applicant:* Ron Naveen, Oceanites Inc, Chevy Chase MD.

Activity for Which Permit Is Requested

Waste Permit; The applicant seeks to maintain two audio recorders that were deployed under an earlier permit and install up to 15 additional recorders. The recorders would be installed near Gentoo penguin colonies and would be used to monitor the colonies as part of the long term ecological study, the Antarctic Site Inventory, conducted by Oceanites Inc. Installation of the recorders would be conducted while performing penguin survey activities authorized under ACA 2014–001 (previously issued to Ron Naveen). The recorders would be installed 3–5 meters from the edge of a penguin colony and would be enclosed in sealed weatherproof metal housing. The recorders would be powered by a combination of AA and D size batteries. The recorders would be visited at least once per year and all dead batteries removed for proper disposal outside of the Antarctic.

Location

Bailey Head, Barrientos Island, Booth Island, Brown Bluff, Cuvervile Island Damoy Point, Danco Island, Georges Point, Jougla Point, Moot Point, Neko Harbor, Petermann Island, Pleneau

Island, Ronge Island East, Yalour Island, Yankee Harbour

Dates

December 3, 2013 to August 31, 2018.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013–26398 Filed 11–4–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2013–0243]

Omaha Public Power District Fort Calhoun Station, Unit 1; Exemption

1.0 Background

Omaha Public Power District (OPPD, the licensee) is the holder of Renewed Facility Operating License No. DPR–40, which authorizes operation of Fort Calhoun Station (FCS), Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Washington County, Nebraska.

2.0 Request/Action

Section 26.205(d)(3) of Title 10 of the *Code of Federal Regulations* (10 CFR), requires licensees to ensure that individuals who perform duties identified in 10 CFR 26.4(a)(1) through (a)(5) to comply with the requirements for maximum average work hours in 10 CFR 26.205(d)(7). However, 10 CFR 26.205(d)(4) provides that during the first 60 days of a unit outage, licensees need not meet the requirements of 10 CFR 26.205(d)(7) for individuals specified in 10 CFR 26.4(a)(1) through (a)(4), while those individuals are working on outage activities. The less restrictive requirements of 10 CFR 26.205(d)(4) and (d)(5) are permitted to be applied during the first 60 days of a unit outage following a period of normal plant operation in which the workload and overtime levels are controlled by 10 CFR 26.205(d)(3). Regulations in 10 CFR 26.205(d)(4) also require licensees to ensure that the individuals specified in 10 CFR 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (i.e., non-rolling) 15-day period and that the individuals specified in 10 CFR 26.4(a)(4) have at least 1 day off in any 7-day period. Regulatory Guide (RG) 5.73, ''Fatigue Management for Nuclear Power Plant Personnel,'' endorses Nuclear Energy Institute (NEI) 06–11, ''Managing Personnel Fatigue at Nuclear Power Reactor Sites,'' Revision 1, with exceptions, additions, and deletions. Position 10 of RG 5.73 ''C. Regulatory Position'' provides an acceptable alternate method to the method stated in the NEI 06–11, Section 8.3, for transitioning individuals who are working an outage at one site onto an outage at another site. On June 11, 2013, OPPD received a previous exemption from the NRC (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13157A135).

By letter dated August 16, 2013 (ADAMS Accession No. ML13231A018), OPPD requested a one-time exemption from specific requirements of 10 CFR 26.205(d)(7). The proposed exemption would allow the use of the less restrictive working hour limitations described in 10 CFR 26.205(d)(4) and (d)(5) to support activities required for plant startup from the current extended outage. This request was made subsequent to the previous exemption period which was approved for a 60-day period, and expired on August 9, 2013. In the previous exemption request, OPPD provided background on what has led to their need for the exemption including flooding and a significant operational event involving a fire in safety-related electrical switchgear which led to transitioning to Inspection Manual Chapter (IMC) 0350, ''Oversight of Reactor Facilities in a Shutdown Condition due to Significant Performance and/or Operational Concerns,'' from being in an extended shutdown with significant performance problems. Because of these events, there has been an increase in workload prior to restart. In obtaining the previous exemption, OPPD committed to ensure that no individual covered by 10 CFR 26.4(a)(1) through (a)(5) would work more than 50 hours per week averaged over the 2-week period prior to the effective date of the exemption. The licensee is requesting this additional one-time exemption assist in its efforts to complete work activities supporting the restart of FCS from the current extended refueling outage, which began in April 2011.

The licensee stated in its letter dated August 16, 2013, that during the previous exemption period, OPPD completed activities required to restart FCS, however, due to a revision to the current licensing basis to comply with Regulatory Guide 1.76, ''Design-Basis Tornado and Tornado Missiles for Nuclear Power Plants,'' additional work remains to support the restart of the plant. This is due to the required installation of barriers and other activities to address tornado missile vulnerabilities that were identified. By letter dated August 30, 2013 (ADAMS Accession No. ML13246A182), the licensee stated that the installation of the upper guide structure and the reactor vessel head were delayed by the activities related to the resolution of tornado missile vulnerabilities. By letter dated September 23, 2013 (ADAMS Accession No. ML13267A186), in response to the NRC staff's request for additional information dated September 18, 2013 (ADAMS Accession No. ML13261A212), the licensee specified that the schedule delay was directly related to the exigent license amendment dated July 26, 2013 (ADAMS Accession No. ML13203A070), which permitted OPPD to presume that the raw water system was protected from a tornado by crediting the barriers. The licensee stated that this became evident on July 20, 2013. This work performed during the latter weeks of the exemption period ending on August 9, 2013, was not start-up activities as requested and initially scheduled by the licensee; however, the work associated with the exigent amendment request was necessary to begin fuel loading.

In its supplemental information letter dated August 30, 2013, the licensee stated that in addition to the tornado missile vulnerabilities, there was an issue with high-energy line breaks (HELB) that required modifications and testing prior to plant start-up. This issue is described in Licensee Event Report (LER) 2013–011 dated August 12, 2013 (ADAMS Accession No. ML13225A367). Additionally, an issue with high-pressure safety injection (HPSI) as described in LER 2013–010 (ADAMS Accession No. ML13186A011) was identified. The resolution of this issue diverted individuals subject to work hour controls away from start-up activities. In its letter dated September 23, 2013, the licensee stated that work remains to resolve the HELB issue by individuals subject to work hour controls, whereas the work associated with the HPSI issue has been completed. The licensee described the work scheduled for completion during the proposed exemption period. The resolution of the alternate seismic, piping code, and equipment reclassification issues associated with the HELB modifications are not expected to require work by individuals who are under the provisions of work hour controls during the proposed exemption period. The licensee provided a summary of the work schedule for the proposed exemption period. The schedule consists primarily

of those activities associated with a normal plant start-up, including system alignments and confirmation walkdowns, fill and vent procedures, modifications, monitoring, just-in-time training for operators, and with closing the breakers signifying the end of the outage on October 26, 2013. Subsequent to OPPD letter dated September 23, 2013, the NRC staff was informed that changes to the schedule have occurred such that the target date of October 26, 2013, for closing the breakers, signifying the end of the outage is no longer valid. Nevertheless, in its letter dated September 23, 2013, OPPD requested that the remaining activities necessary for plant start-up and the activities necessary to resolve the HELB issues be completed within a 45-day exemption period, even though the work is scheduled for 30 days. The licensee has requested approval for a 45-day duration. Previous exemption requests granted by the NRC have not exceeded 30 days, with the exception of what had been granted previously for FCS. Due to the extended shutdown period of over 2 years, the NRC staff concludes that the 45-day exemption period is acceptable because unforeseen issues may arise while completing start-up activities. By letter dated October 25, 2013 (ADAMS Accession No. ML13298A809), the licensee withdrew a portion of its original request in that this exemption would only apply to those individuals described in 10 CFR 26.4 (a)(1) through (a)(4). During the exemption period, the licensee commits to the application of 10 CFR 26.205(d)(4) to the individuals performing those duties specified in 10 CFR 26.4(a)(1) through (a)(4) regarding minimum days off for covered personnel.

As written in the statements of considerations in the **Federal Register** notice for part 26, subpart I, the regulations, meeting the work hour control limits does not definitively mitigate fatigue. The licensee stated that since August 10, 2013, FCS personnel have averaged less than 47 hours per week. This schedule was maintained to minimize the effects of cumulative fatigue management before the exemption period begins. The licensee provided a description of the 30-day period preceding the proposed exemption period that is intended to mitigate cumulative fatigue. Below are tables provided in the licensee's letters dated August 30 and September 23, 2013. The tables describe the hours worked by individuals subject to the work hour controls separated by the functions described in 10 CFR 26.4(a). It should be noted that OPPD does not track the fire brigade work hours that fall under 10 CFR 26.4 (a)(3) separately. Rather, the fire brigade personnel are taken from the operations (10 CFR 26.4 (a)(1)) and security (10 CFR 26.4 (a)(5)) groups. For the purpose of this exemption, the fire brigade personnel subject to this exemption are those within the operations group. Table 2.1 represents the average work hours from August 10, 2013, to the time of the August 30, 2013, submittal, and Table 2.2 represents the average work hours from August 11, 2013, through September 21, 2013.

TABLE 2.1

Department	Work hours
Chemistry	47
Radiation Protection	42
Maintenance	42
Operations	43
Security	44

TABLE 2.2

Department	Work hours
Chemistry	40
Radiation Protection	40
Maintenance	46
Operations	40
Security	44

These hours represent the time worked by individuals immediately after the previous exemption period ended until the NRC approval of the proposed exemption request. The licensee stated that this represents an approximate 6-week shift cycle.

The NRC staff considers the work hours averaged by individuals acceptable to mitigate cumulative fatigue in the instance of this exemption request. Due to the scheduling of the two outage relaxation exemption periods requested, the NRC staff considers it important to mitigate cumulative fatigue before the proposed exemption period of 45 days. Because the exemption is tied to activities that directly relate to heating the reactor coolant T_{cold} greater than 210 °F (i.e., exiting Mode 4 or 5), the exemption is being issued coincident with the date that OPPD intends to heat the reactor coolant T_{cold} greater than 210 °F (i.e., exit Mode 4 or 5). Further, the exemption is granted to those individuals who perform duties described in 10 CFR 26.4(a)(1) through (a)(4) that, as of the date of this exemption, have not exceeded a 48 hour average work week for the 6 week period prior to the date of this exemption. By limiting the exemption to individuals that meet these criteria the staff considers that cumulative fatigue is acceptably mitigated in the instance of this exemption request. By letter dated October 11, 2013 (ADAMS Accession No. ML13284A104), in response to the NRC staff's request for additional information dated October 9, 2013 (ADAMS Accession No. ML13282A536), the licensee stated that a 50-hour average work week for those individuals described in 10 CFR 26.4 (a)(5) would be more appropriate due to an upcoming force-on-force (FOF) exercise, modifications necessary to meet the requirements of 10 CFR 73.55, in addition to activities related to startup. Subsequently, by letter dated October 25, 2013, the licensee withdrew a portion of its original request in that this exemption would only apply to those individuals described in 10 CFR 26.4 (a)(1) through (a)(4) and not 10 CFR 26.4 (a)(5) for security personnel. The NRC staff considers that because personnel associated with the fire brigade are taken from different groups at OPPD, limiting the fire brigade to a 48 hour average work week for the 6 week period prior to the date of this exemption will ensure the cumulative fatigue is acceptably mitigated for those individuals that perform duties in the operations group.

3.0 Discussion

Pursuant to 10 CFR 26.9, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 26 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

FCS commenced a refueling outage on April 9, 2011, and declared an Unusual Event on June 6, 2011. The first 60 days of the outage during which the less restrictive work hour limitations of 10 CFR 26.205(d)(4) and (d)(5) were in effect, ended in June 2011. On October 10, 2012, OPPD requested an exemption from specific requirements of 10 CFR 26.205(d)(7) and instead allow the use of the less restrictive working hour limitations described in 10 CFR 26.205(d)(4) and (d)(5) to support activities required for plant start-up. The NRC granted the exemption for a period, which lasted 60 days and ended on August 9, 2013, and individuals began working a normal, on-line schedule in compliance with 10 CFR 26.205(d)(7). Work group timekeepers for on-line and plant outage periods are to maintain schedules and time reports. Duration of scheduled work and break

periods, start times, rotating schedules, training, and vacation are considered when establishing work schedules.

Notwithstanding the exemption for this specific requirement, the licensee will continue to be in compliance with all other requirements as described in 10 CFR part 26.

Authorized by Law

This exemption would allow the licensee to use the less restrictive working hour limitations provided in 10 CFR 26.205(d)(4) for completion of the outage activities, for a period of 45 days, during the current extended outage. The approval of this exemption, as noted above, would allow the licensee the use of the less restrictive working hour limitations described in 10 CFR 26.205(d)(4) for an additional period not to exceed 45 days or until the reactor unit is connected to the electrical grid whichever occurs first, to support activities required to be finished before plant startup can be completed. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR part 26. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, law authorizes the exemption.

Will Not Endanger Life or Property

The underlying purpose of 10 CFR 26.205(d)(4) is to provide licensees flexibility in scheduling required days off when accommodating the more intense work schedules associated with a unit outage, while assuring that cumulative fatigue does not compromise the abilities of individuals to safely and competently perform their duties.

Based on the information provided by OPPD in its August 30, and September 23, 2013, letters, FCS personnel have averaged less than 48 hours per week. Further, the exemption is granted to those individuals who perform duties described in 10 CFR 26.4(a)(1) through (a)(4) that, as of the date of this exemption, have not exceeded a 48-hour average work week for the 6-week period prior to the date of this exemption. This provides assurance that covered workers are not already fatigued from working an outage schedule. This exemption would allow the licensee to implement the less restrictive work hour requirements of 10 CFR 26.205(d)(4) to allow flexibility in scheduling required days off while accommodating the more intensive work schedules that accompany completion of the FCS extended outage. Therefore, cumulative fatigue will not compromise the abilities of affected individuals to safely and competently perform their duties.

No new accident precursors are created by invoking the less restrictive work hour limitations on a date commensurate with the start of those activities supporting the completion of the extended outage at FCS, provided that the licensee has effectively managed fatigue for the affected individuals prior to this date. Thus, no new accident precursors are created by invoking the less restrictive work hour limitations on a date commensurate with the start of activities supporting the restart of FCS. The licensee will effectively manage fatigue for the covered individuals prior to this date. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, granting this exemption will not endanger life or property.

Consistent With Common Defense and Security

The proposed exemption would allow for the use of the less restrictive work-hour requirements of 10 CFR 26.205(d)(4) for those individuals who perform duties described in 10 CFR 26.4(a)(1) through (a)(4) that, as of the date of this exemption, have not exceeded a 48-hour average work week for the 6-week period prior to the date of this exemption in lieu of 10 CFR 26.205(d)(7). This exemption would affect operations (including fire, radiation protection, chemistry, fire brigade, and maintenance personnel supporting the completion of the outage activities for FCS, which has been in an extended outage since April 9, 2011.

The licensee will maintain the qualified personnel to which this exemption applies in the operations, radiation protection, chemistry, fire brigade, and maintenance departments on a schedule that complies with 10 CFR 26.205(d)(4) requirements during the proposed exemption period. The exemption would continue to serve the underlying purpose of 10 CFR part 26, subpart I, in that assurance would be provided such that cumulative fatigue of individuals to safely and competently perform their duties will not be compromised. Therefore, the common defense and security is not impacted by this exemption.

Consistent With the Public Interest

The proposed exemption would allow the licensee to implement the less restrictive work hour requirements of 10 CFR 26.205(d)(4) for those individuals who perform duties described in 10 CFR 26.4(a)(1) through (a)(4) that, as of the date of this exemption, have not exceeded a 48-hour average work week for the 6-week period prior to the date of this exemption in lieu of 10 CFR 26.205(d)(7) to allow flexibility in scheduling required days off while accommodating the more intensive work schedules that accompany a unit outage. By letters dated August 30 and September 23, 2013, the licensee explained the emergent events supporting the less restrictive limitations requiring flexibility in scheduling. During the completion of the extended outage, the workload for the affected personnel will undergo a temporary but significant increase due to the various activities from being in an extended shutdown with significant performance problems, in addition to tornado missile vulnerabilities, and issues concerning the HELB accident scenario. During the extended shutdown, extensive work has been initiated to address deficiencies noted in containment building electrical penetrations, containment structural supports, and the impact of flooding hazards related to systems, structures, and components. These activities are in addition to the normal FCS startup activities involving operation and surveillance testing of primary systems and components. Ensuring a sufficient number of qualified personnel are available to support these activities is in the interest of overall public health and safety. Therefore, this exemption is consistent with the public interest.

4.0 Environmental Consideration

The exemption would authorize a one-time exemption from the requirements of 10 CFR 26.205(d)(7) to allow the use of the less restrictive hour limitations described in 10 CFR 26.205(d)(4). Using the standard set forth in 10 CFR 50.92 for amendments to operating licenses, the NRC staff determined that the subject exemption sought involves employment suitability requirements. The NRC has determined that this exemption involves no significant hazards considerations:

(1) The proposed exemption is administrative in nature and is limited to changing the timeframe when less restrictive hours can be worked. This does not result in any changes to the design basis requirements for the structures, systems, and components (SSCs) at FCS that function to limit the release of non-radiological effluents during and following postulated accidents. Therefore, issuance of this exemption does not increase the probability or consequences of an accident previously evaluated.

(2) The proposed exemption is administrative in nature and is limited to changing the timeframe when less restrictive hours can be worked. The proposed exemption does not make any changes to the facility or operating procedures and would not create any new accident initiators. The proposed exemption does not alter the design, function, or operation of any plant equipment. Therefore, this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed exemption is administrative in nature and is limited to changing the timeframe when less restrictive hours can be worked. The proposed exemption does not alter the design, function, or operation of any plant equipment. Therefore, this exemption does not involve a significant reduction in the margin of safety.

Based on the above, the NRC concludes that the proposed exemption does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92, and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has also determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative occupational radiation exposure; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirement from which the licensee will be exempted involves scheduling requirements. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment is required to be prepared in connection with granting the exemption.

5.0 Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR 26.9, ''Specific exemptions,'' an exemption from 10 CFR 26.205(d)(7) is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants OPPD a one-time, 45-day exemption from 10 CFR 26.205(d)(7) to allow the use of the work hour limitations described in 10 CFR 26.205(d)(4) for those individuals who perform duties described in 10 CFR 26.4(a)(1) through (a)(4) that, as of the date of this exemption, have not exceeded a 48-hour average work week for the 6-week period prior to the date of this exemption.

This exemption is effective upon issuance. The licensee may implement the work hour provisions of 10 CFR 26.205(d)(4) for those individuals subject to the work hour controls separated by the functions described in 10 CFR 26.4(a) that, as of the date of this exemption, have not exceeded a 48-hour average work week for the 6 week period prior to the date of this exemption for 45 days or until the completion of the current extended outage, whichever is shorter.

Dated at Rockville, Maryland, this 28th day of October 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–26379 Filed 10–4–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2013–0231]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, opportunity to request a hearing and petition for leave to intervene; order.

DATES: Comments must be filed by December 5, 2013. A request for a hearing or petition for leave to intervene must be filed by January 6, 2014. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 15, 2013.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0231. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0231 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0231.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0231 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

Due to the Federal Government shutdown, there was no SUNSI publication on October 8, 2013.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final

determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system. A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application,

participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1)(ii)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 28, 2013, as supplemented by letter dated July 16, 2013. Publicly available versions of the letters dated March 28, and July 16, 2013, are available in ADAMS under Accession Nos. ML130950023 and ML13205A056, respectively.

Brief description of amendments: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise Technical Specification (TS) 3.7.16, ''Fuel Storage Pool Boron Concentration,'' TS 3.7.17, ''Spent Fuel Assembly Storage,'' TS 4.3, ''Fuel Storage,'' and TS 5.5, ''Programs and Manuals.'' The revised TS 3.7.16 describes the proposed minimum concentration of dissolved boron in the fuel storage pools. TS 3.7.17 describes proposed storage configurations allowed in Region II high density storage racks based on minimum burnup limitations based on a revised spent fuel pool (SFP) criticality analysis using a new methodology. TS 4.3 describes the fuel storage design requirements in the Fuel Building. TS 5.5 provides a proposed Neutron Absorber Monitoring Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

All proposed Technical Specification changes are related to changes for storage limitations in the spent fuel pool storage racks. The Region I analysis was updated to use modern methods, but other than inclusion of a neutron absorber monitoring program, the limitations for storage were unchanged.

Applicable accidents previously evaluated include the boron dilution accident, and fuel misload accident.

The probability for a boron dilution accident is not affected by the proposed Technical Specification change to storage limits. The consequences of a dilution accident are not increased, since the proposed change to the minimum spent fuel pool boron concentration increases the limit from 2000 ppm to 2400 ppm, and the boron required to ensure k-effective less than or equal to 0.95 has been decreased from 800 ppm to 400 ppm. Therefore, a much larger volume of water would be required to approach the acceptance criteria than assumed in the previous analysis.

The limitations associated with the proposed Technical Specification 3.7.17 utilize the same basic concepts as the current limits, in that fuel parameters are utilized to determine the minimum burnup requirements for multiple allowed storage configurations. The acceptability of a fuel configuration is then verified administratively prior to moving fuel in the Region II racks. However, the proposed limits are more complex than the current limits in several aspects.

- The fuel inventory is divided into two Fuel Groups (under the current Technical Specifications, the same limits apply to all fuel designs).
- Region II has 5 allowable storage arrays (up from 4).
- One of the allowable arrays is limited to rows adjacent to the spent fuel pool wall.
- One of the allowable arrays contains assemblies of two fuel categorizations in a specific pattern, and is limited to a single Fuel Group.
- Calculation of the minimum burnup for each fuel category will require Decay Time, which is not an input parameter in the current limits.

With the proper administrative controls, the proposed increase in complexity would not result in an increase in the probability of a fuel misload accident due to a fuel move planning error. For example, determining the acceptability of a loading pattern based on the current Technical Specification limits can be performed visually by reviewing a color coded spent fuel pool map. Violations of the storage pattern are easily recognizable and easily identified. Although color coded spent fuel pool maps will still be useful, the increased complexity of the proposed Technical Specification 3.7.17 limits results in increased difficulty for identifying non-compliant configurations by simple visual methods. Improvements in the administrative controls are necessary to ensure that this type of simple visual verification is not relied upon, and to ensure that the increased complexity will not result in an increased risk of a Technical Specification 3.7.17 non-compliance.

The proposed Technical Specification 3.7.17 Surveillance Requirement now requires verification of the fuel move plans and the final configuration. This is a significant improvement compared to the current surveillance requirement, which only requires verification of fuel parameters versus the burnup limits, and is not a verification of the fuel movement plan. Fitting coefficients, rather than burnup-vs-enrichment curves, allow increased accuracy and reduce the chance of software errors.

Fuel handling procedure changes implement a second layer of defense to ensure that a multiple misload event, beyond the analyzed accident condition, is not credible. The proposed Technical Specification 3.7.17 includes a requirement to consider all fresh fuel assemblies Category 1 (the highest reactivity fuel category) regardless of initial enrichment. This limit, which is conservative relative to the criticality safety analysis, can be easily verified during fuel handling, since fresh fuel is visually distinct from irradiated fuel, due to lack of oxidation discoloration. All Category 1 fuel assemblies stored in Region II must be surrounded by empty storage cells, which can also be visually verified during fuel movement. Additionally, the proposed Technical Specification 3.7.17 limits only have a small area of the spent fuel pool where a solid fuel configuration is allowed, in the two rows adjacent to the spent fuel pool walls. Compliance with this limitation can also be verified during fuel handling. Since fuel handling procedures will direct the fuel handler to stop fuel movement if the above situations are encountered, regardless of the approved fuel move plans, these additional verifications reduce the probability of many fuel misload events.

The probability of other evaluated accidents, such as a seismic event, a dropped fuel assembly, or a temperature excursion, is not affected by the revised limitations. Analysis has been completed which demonstrates the consequences of these accidents are not significantly increased.

Therefore the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes which ensure the maintenance of the fuel storage pool boron concentration and storage configuration do not represent new concepts. The actual boron concentration in the fuel storage pool has

been previously maintained at or above 2,400 ppm for spent fuel pool 1 and spent fuel pool 2. The criticality analysis determined that a boron concentration of 400 ppm (non-accident) and 2,400 ppm (accident) results in a k-effective less than 0.95.

The possibility of a fuel storage pool dilution is not affected by the proposed change to the Technical [S]pecifications. Therefore, increasing the Technical Specification controls for the soluble boron will not create the possibility of a new or different kind of accidental pool dilution.

The potential for criticality in the spent fuel pool is not a new or different type of accident. All storage configurations allowed by Technical Specification 3.7.17 have been analyzed to demonstrate that the pool remains subcritical.

The criticality safety analysis includes analysis of a multiple misload accident scenario; only single misload events were previously analyzed. This analysis was performed in light of recent industry operating experience which demonstrates that misload events beyond a single misload event are credible. The inclusion of this analysis does not imply the creation of the possibility of a new accident, but simply expands the boundaries of the analyzed accident conditions to ensure that all potential accidents are properly considered.

There is no significant change in plant configuration, equipment design, or usage of plant equipment. The safety analysis for boron dilution remains bounding. The criticality analyses assure that the pool will remain subcritical with no credit for soluble boron.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Proposed Technical Specifications 3.7.16, 3.7.17, and 4.3 and the associated fuel storage requirements will provide adequate margin to assure that the fuel storage array in Region II will remain subcritical by the margins required in 10 CFR 50.68.

The criticality analysis for both Region I and Region II utilized credit for soluble boron, and the storage configurations have been defined using k-effective calculations to ensure that the spent fuel rack k-effective will be less than 1.0 with no soluble boron. Soluble boron credit is used to offset off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the fuel storage pool k-effective is maintained less than or equal to 0.95. The loss of substantial amount of soluble boron from the spent fuel pools which could lead to exceeding a k-effective of 0.95 has been evaluated and shown not to be credible. These evaluations show that the dilution of the spent fuel pools boron concentration from 1,900 ppm to 800 ppm is not credible and that the fuel stored in Region II racks will remain less than 1.0 k-effective when flooded with unborated water.

The thermal-hydraulic conditions of spent fuel pool cooling, when considering the stretch power uprate, were considered in License Amendment 146, and found to be acceptable by the NRC [U.S. Nuclear Regulatory Commission]. The spent fuel pool cooling system continues to maintain the temperature of the bulk spent fuel pool water within the limits of the existing licensing basis. Thus, the existing licensing basis remains valid, and there is no significant reduction in the margin of safety for the thermal-hydraulic design or spent fuel cooling.

The main safety function of the spent fuel pool racks is to maintain the spent fuel assemblies in a safe configuration through normal and abnormal operating conditions. The structural considerations of the spent fuel pool storage racks continue to maintain margin of safety against tilting and deflection or movement, such that the racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. Thus, the margin of safety with respect to mechanical, material or structural considerations is not changed by this proposed License Amendment Request.

The addition of a Spent Fuel Pool Rack Neutron Absorber Monitoring program (proposed Technical Specification section 5.5.22) provides a method to identify potential degradation in the neutron absorber material prior to challenging the assumptions of the Criticality Safety Analysis related to the material. Additionally, the revised analysis utilized more conservative assumptions relative to the current Analysis of Record. Therefore, the addition of this monitoring program does not reduce the margin of safety, but ensures the margin of safety is maintained for the planned life of the spent fuel storage racks.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Michael T. Markley

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 28th day of October 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2013–26279 Filed 11–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

DATE: Weeks of November 4, 11, 18, 25, December 2, 9, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 4, 2013—Tentative

There are no meetings scheduled for the week of November 4, 2013.

Week of November 11, 2013—Tentative

There are no meetings scheduled for the week of November 11, 2013.

Week of November 18, 2013—Tentative

There are no meetings scheduled for the week of November 18, 2013.

Week of November 25, 2013—Tentative

There are no meetings scheduled for the week of November 25, 2013.

Week of December 2, 2013—Tentative

There are no meetings scheduled for the week of December 2, 2013.

Week of December 9, 2013—Tentative

There are no meetings scheduled for the week of December 9, 2013.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: October 31, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary,

[FR Doc. 2013–26583 Filed 11–1–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30771; 812–14185]

OFS Capital Corporation, et al.; Notice of Application

October 30, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a) and 61(a) of the Act.

APPLICANTS: OFS Capital Corporation (the ''Company''), OFS Capital Management, LLC (the ''Investment Adviser''), Tamarix Capital G.P. LLC (the ''General Partner''), and Tamarix Capital Partners, L.P. (''OFS SBIC'').

SUMMARY OF THE APPLICATION: The Company requests an order to permit it to adhere to a modified asset coverage requirement.

FILING DATES: The application was filed July 29, 2013, and amended on October 4, 2013 and October 28, 2013.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2013 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Glenn R. Pittson, OFS Capital Corporation, 2850 West Golf Road, Suite 520, Rolling Meadows, Illinois 60008.

FOR FURTHER INFORMATION CONTACT: David J. Marcinkus, Senior Counsel, at (202) 551–6882, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Exemptive Applications Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business

development company (''BDC'') under the Act.[1] The Company's investment objective is to provide its stockholders with both current income and capital appreciation primarily through debt investments and, to a lesser extent, equity investments. The Investment Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. OFS SBIC, a Delaware limited partnership, is a small business investment company (''SBIC'') licensed by the Small Business Administration (''SBA'') to operate under the Small Business Investment Act of 1958 (''SBIA''). OFS SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company currently owns a 67.5 percent limited partnership interest in OFS SBIC.[2] The General Partner, a Delaware limited liability company, is the general partner of OFS SBIC. The General Partner owns 1% of OFS SBIC in the form of a general partner interest.

Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exemption from the definition of ''investment company'' under the 1940 Act (each, a ''SBIC Subsidiary'').[3] Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by OFS SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by OFS SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit OFS SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, OFS SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, OFS SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of a SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of ''asset coverage'' in section 18(h), shall be treated as indebtedness not represented by senior securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26412 Filed 11–4–13; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Company intends to acquire all of the remaining limited partnership interests in OFS SBIC that are currently owned or subscribed for by other persons. The Company also intends to acquire all of the membership interests in the General Partner. The Company currently holds a 23.35 percent membership interest in the General Partner. Acquiring the limited partnership interests in OFS SBIC and the membership interests in the General Partner (the ''Transaction'') requires prior SBA approval, and there can be no assurance if and when the SBA will grant this approval. Once the Transaction is complete, OFS SBIC will be a SBIC Subsidiary (defined below), the General Partner will be a wholly-owned subsidiary of the Company, and each of OFS SBIC and the General Partner will be consolidated with the Company for financial reporting purposes. However, until the Transaction is completed, the Company will not rely on requested order with respect to OFS SBIC.

[3] All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 7, 2013 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10)

and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 31, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26559 Filed 11–1–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70774; File No. SR–NYSEArca–2013–106]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Shares of PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

October 30, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 15, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 29, 2013, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): PIMCO Diversified Income Exchange-Traded Fund; PIMCO Low Duration Exchange-Traded Fund; and PIMCO Real Return Exchange-Traded Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares: [5] PIMCO Diversified Income Exchange-Traded Fund; PIMCO Low Duration Exchange-Traded Fund; and PIMCO Real Return Exchange-Traded Fund (each a ''Fund'' and, collectively, the ''Funds''). The Shares will be offered by PIMCO ETF Trust (the ''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6]

The investment manager to the Funds will be Pacific Investment Management Company LLC (''PIMCO'' or the ''Adviser''). PIMCO Investments LLC will serve as the distributor for the Funds (''Distributor''). State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds (''Custodian'' or ''Transfer Agent'').[7]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[8] In addition,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Amendment No. 1 replaced and superseded the proposal in its entirety.

[5] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[6] The Trust is registered under the 1940 Act. On April 22, 2013, the Trust filed with the Commission an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') and the 1940 Act relating to the Funds (File Nos. 333–155395 and 811–22250) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571) (''Exemptive Order'').

[7] The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca-2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca-2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving Exchange listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving Exchange listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[8] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's respective portfolio. In the event (a) the Adviser or any sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

PIMCO Diversified Income Exchange-Traded Fund

According to the Registration Statement, the Fund's investment objective will be to seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing under normal circumstances [9] at least 65% of its total assets in a diversified portfolio of ''Fixed Income Instruments'' of varying maturities and forward contracts on such Fixed Income Instruments.

Fixed Income Instruments include bonds, debt securities and other similar instruments issued by various U.S. and non-U.S. public- or private-sector entities. Specifically, with respect to each of the Funds (except as noted below), the term ''Fixed Income Instruments'' includes: securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (''U.S. Government Securities''); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; event-linked bonds; bank capital and trust preferred securities; loan participations and assignments; delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities.[10]

Forwards on securities are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time. Forwards on Fixed Income Instruments are contracts to purchase or sell Fixed Income Instruments for a fixed price at a future date beyond normal settlement time. The Adviser represents that a forward will be a useful tool for gaining exposure across markets, particularly in the U.S. Treasury, U.S. agency, non-U.S. government, and mortgage markets when a Fund seeks exposure to a particular issue or maturity.[11] In general, forwards can be an economically attractive substitute for an underlying physical security that a Fund would otherwise purchase. Economic benefits include potentially lower transaction costs or attractive relative valuation of a forward versus a physical security (*e.g.,* differences in yields).

A common forward commitment is a mortgage ''to be announced'' (''TBA''), which is an important vehicle for gaining exposure to the mortgage pass-through market. Mortgage TBAs provide exposure to new mortgage pools, issued by the Government National Mortgage Association (''Ginnie Mae''), Federal National Mortgage Association (''Fannie Mae'') or Federal Home Loan Mortgage Corporation (''Freddie Mac''), which have a regular, once-a-month settlement. When a fund purchases a mortgage TBA, the underlying mortgage-related securities are delivered in the next settlement cycle (unless settlement is ''rolled'' to a future date).

The Adviser believes that liquidity of a forward settling transaction depends on the underlying issue or exposure (*e.g.,* greater liquidity for Treasuries as compared to a particular collateralized mortgage obligation). For example, the mortgage TBA market is highly liquid and positions can be easily added, rolled, or closed. According to Financial Industry Regulatory Authority (''FINRA'') Trade Reporting and Compliance Engine (''TRACE'') data, TBAs represented approximately 94% of total agency trading volume in the month of April 2013.

Forwards are marked to market daily and can be priced intraday based on the underlying issue or exposure. Intraday pricing of securities to be settled on forward basis is often available on

Commission rules adopted thereunder; implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph above and the effectiveness of their implementation; and designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] Securities issued by U.S. Government agencies or government-sponsored enterprises may not be guaranteed by the U.S. Treasury.

With respect to the Funds' investments in bank capital securities, there are two common types: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), are callable, and have a cumulative interest deferral feature. This means that under certain conditions, the issuer bank can withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

According to the Registration Statement, with respect to the PIMCO Real Return Exchange-Traded Fund, the term Fixed Income Instruments does not include: event-linked bonds; bank capital and trust preferred securities; loan participations and assignments; and debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises.

[11] Investments in forwards will be made in accordance with the 1940 Act and consistent with each Fund's investment objectives and policies. With respect to each of the Funds, the Adviser represents that each Fund will typically use forwards as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. A Fund may also use forwards to enhance returns. To limit the potential risk associated with such transactions, each Fund will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from its use of forwards. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a Fund, including a Fund's use of derivatives, may give rise to leverage, causing a Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

quotation services such as Bloomberg. The visibility of intraday prices of forwards is related to the visibility of prices of the underlying asset. Market participants can efficiently value forward settling securities as long as they have access to the relevant information, such as the underlying exposure.

On behalf of the funds it manages, PIMCO maintains standardized Master Forward Agreements in place with various counterparties. These standardized agreements include procedures for periodic collateral movement between a fund and the applicable counterparty to reflect changes in the value of forwards held by a fund.

In selecting individual Fixed Income Instruments, or in making broader sector allocations for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy, analyze credit and call risks and use other investment selection techniques. The proportion of the Fund's assets committed to an individual investment, or investments with particular characteristics (such as quality, sector, interest rate or maturity), will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets and other factors. PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO may identify these areas by grouping Fixed Income Instruments into sectors such as money markets, governments, corporates,[12] mortgages, asset-backed and international. Once investment opportunities are identified, PIMCO will shift assets among individual Fixed Income Instruments, or among sectors, depending upon changes in relative valuations, credit spreads and other factors.

According to the Registration Statement, in managing the Fund, PIMCO may employ both a bottom-up and top-down approach to investment selection. PIMCO's bottom-up value investment style attempts to identify Fixed Income Instruments or sectors that are undervalued by the market in comparison to PIMCO's own determination of value. Using a top-down value investment style, PIMCO also will consider various qualitative and quantitative factors relating to the U.S. and non-U.S. economies, and financial markets. These factors may include the outlook and projected growth of various sectors, projected growth trends in the U.S. and non-U.S. economies, forecasts for interest rates and the relationship between short- and long-term interest rates (yield curve), relative valuation levels in the financial markets and various segments within those markets, information relating to business cycles, borrowing needs and the cost of capital, political trends data relating to trade balances, and labor information. PIMCO has the flexibility to reallocate the Fund's assets among individual investments or sectors based on its ongoing analyses.

The average portfolio duration of the Fund normally will vary from three to eight years, based on PIMCO's forecast for interest rates.[13] The Fund may invest in both investment grade debt securities and high yield debt securities (''junk bonds'') subject to a maximum of 10% of its total assets in debt securities rated below B by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Rating Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality.[14] The Fund may invest in securities and instruments that are economically tied to emerging market countries.[15] The Fund may invest in securities and instruments denominated in foreign currencies and in U.S. dollar-denominated securities or instruments of foreign issuers. Subject to the Fund's investment limitations relating to high yield debt securities generally, the Fund may invest up to 20% of its assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

The Fund's portfolio or the Fund's broad-based securities market index (as defined in Form N–1A) will include a minimum of 13 non-affiliated issuers (excluding a portfolio or broad-based securities market index consisting entirely of exempted securities).[16] The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[17] The Fund may, without limitation, seek to obtain market exposure to the securities in which it invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The ''total return'' sought by the Fund will consist of income earned on the Fund's investments, plus capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

PIMCO Low Duration Exchange-Traded Fund

According to the Registration Statement, the Fund's investment objective will be to seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing under normal circumstances at least 65% of its total assets in a diversified portfolio of Fixed Income Instruments of varying maturities and forward contracts on such Fixed Income

[12] While non-emerging markets corporate debt securities (excluding commercial paper) generally must have $100 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $100 million or more par amount outstanding at the time of investment. *See also* note 15, *infra,* regarding emerging market corporate debt securities.

[13] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[14] PIMCO utilizes sophisticated proprietary techniques in its creditworthiness analysis of unrated securities similar to the processes utilized by Moody's, S&P and Fitch in their respective analyses of rated securities. For example, in making a ''comparable quality'' determination for an unrated security, PIMCO may evaluate the likelihood of payment by the obligor, the nature and provisions of the debt obligation, and/or the protection afforded by, and relative position of, the debt obligation in the event of bankruptcy, reorganization or other arrangement under laws affecting creditors' rights. Upon consideration of these and other factors, PIMCO may determine that an unrated security is of comparable quality to rated securities in which the Fund may invest consistent with the Fund's credit quality guidelines described above.

[15] According to the Registration Statement, PIMCO will have broad discretion to identify countries that it considers to qualify as emerging markets. In making investments in emerging market securities, the Fund will emphasize those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America and Eastern Europe. PIMCO will select the country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments and any other specific factors it believes to be relevant. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $200 million or more par amount outstanding at the time of investment.

[16] The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[17] Each of the Funds may make short sales of securities to: offset potential declines in long positions in similar securities, to increase the flexibility of the Fund; for investment return; and as part of a risk arbitrage strategy.

Instruments.[18] The average portfolio duration of the Fund normally will vary from one to three years based on PIMCO's forecast for interest rates. In selecting individual Fixed Income Instruments, or in making broader sector allocations for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy, analyze credit and call risks and use other investment selection techniques.

The Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield debt securities rated B to Ba by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.[19] The Fund may invest up to 30% of its total assets in securities and instruments denominated in foreign currencies, and may invest beyond this limit in U.S. dollar-denominated securities and instruments of foreign issuers, subject to the Fund's investment limitations relating to particular asset classes set forth herein. The Fund may invest up to 10% of its total assets in securities and instruments that are economically tied to emerging market countries, subject to the Fund's investment limitations relating to particular asset classes set forth herein.[20] The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets.

The Fund's portfolio or the Fund's broad-based securities market index (as defined in Form N–1A) will include a minimum of 13 non-affiliated issuers (excluding a portfolio or broad-based securities market index consisting entirely of exempted securities).[21] Subject to the Fund's 10% investment limitations relating to high yield debt securities, the Fund may invest up to 20% of its assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[22] The Fund may, without limitation, seek to obtain market exposure to the securities in which it invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls). The ''total return'' sought by the Fund will consist of income earned on the Fund's investments, plus capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

PIMCO Real Return Exchange-Traded Fund

According to the Registration Statement, the Fund's investment objective will be to seek maximum real return, consistent with preservation of capital and prudent investment management. The Fund will seek its investment objective by investing under normal circumstances at least 80% of its net assets in inflation-indexed bonds of varying maturities issued by U.S. and non-U.S. governments, their agencies or instrumentalities, and corporations, and forward contracts on such Fixed Income Instruments.[23] Assets not invested in inflation-indexed bonds may be invested in other types of Fixed Income Instruments. Inflation-indexed bonds are fixed income securities that are structured to provide protection against inflation. The value of the bond's principal or the interest income paid on the bond is adjusted to track changes in an official inflation measure. The U.S. Treasury uses the Consumer Price Index for Urban Consumers as the inflation measure. Inflation-indexed bonds issued by a foreign government are generally adjusted to reflect a comparable inflation index, calculated by that government. ''Real return'' equals total return less the estimated cost of inflation, which is typically measured by the change in an official inflation measure.

According to the Registration Statement, because market convention for bonds is to use nominal yields to measure duration, duration for real return bonds, which are based on real yields, are converted to nominal durations through a conversion factor. The resulting nominal duration typically can range from 20% and 90% of the respective real duration. All security holdings will be measured in effective (nominal) duration terms.[24] The effective duration of the Fund normally will vary within three years (plus or minus) of the effective portfolio duration of the securities comprising the Barclays Capital U.S. TIPS Index, as calculated by PIMCO, which as of January 31, 2013, as converted, was 6.16 years.

The Fund will invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield debt securities rated B to Ba by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.[25]

The Fund also may invest up to 30% of its total assets in securities denominated in foreign currencies, and may invest beyond this limit in U.S. dollar-denominated securities of foreign issuers, subject to the Fund's investment limitations relating to particular asset classes set forth herein. The Fund may invest up to 10% of its total assets in securities and instruments that are economically tied to emerging market countries, subject to the Fund's investment limitations relating to particular asset classes set forth herein.[26] The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets.

The Fund's portfolio or the Fund's broad-based securities market index (as defined in Form N–1A) will include a minimum of 13 non-affiliated issuers (excluding a portfolio or broad-based securities market index consisting entirely of exempted securities).[27] Subject to the Fund's 10% investment limitations relating to high yield debt securities, the Fund may invest up to 20% of its assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.[28] The Fund may, without limitation, seek to obtain market exposure to the securities in which it invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

[18] *See supra* discussion regarding forwards.

[19] *See* note 14, *supra.*

[20] *See* note 15, *supra.*

[21] The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[22] *See* note 17, *supra.*

[23] *See supra* discussion regarding forwards.

[24] According to the Registration Statement, effective duration takes into account that for certain bonds expected cash flows will fluctuate as interest rates change and is defined in nominal yield terms, which is market convention for most bond investors and managers. The effective duration of the Barclays Capital U.S. TIPS Index (referenced below) will be calculated using the same conversion factors as the Fund.

[25] *See* note 14, *supra.*

[26] *See* note 15, *supra.*

[27] The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[28] *See* note 17, *supra*

Other Portfolio Holdings

As disclosed in the Trust's Registration Statement, if PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of a Fund's assets in certain defensive strategies, including holding a substantial portion of a Fund's assets in cash, cash equivalents or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies or instrumentalities and affiliated money market and/or short-term bond funds.

While the debt securities in which the Funds primarily intend to invest are expected to consist of Fixed Income Instruments, as described above, the Funds may invest their respective remaining net assets in other securities and financial instruments, as described below.

Each of the Funds may engage in foreign currency transactions through forward currency contracts. A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. A Fund's investments in foreign currency forwards will be subject to the limit on a Fund's foreign currency exposure. For each of the PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund, foreign currency exposure will not exceed 20% of the Fund's total assets. There is no limit on the PIMCO Diversified Income Fund's foreign currency exposure.

The Funds may invest in equity securities. The Funds will invest only in U.S. and non-U.S. equity securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.[29]

The Funds each may invest up to 10% of its total assets in preferred stock, convertible securities [30] and other equity-related securities.

The Funds may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and rules thereunder, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds.

The Funds may hold up to an aggregate amount of 15% of their respective net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.[31] The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[32]

Investment Limitations

The Funds will be subject to the following investment limitations:

The Funds may not concentrate their investments in a particular industry, as that term is used in the 1940 Act,[33] and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.[34]

With respect to the PIMCO Diversified Income Exchange-Traded Fund and PIMCO Low Duration Exchange-Traded Fund, the Funds may not, with respect to 75% of each Fund's total assets, purchase the securities of any issuer, except securities issued or guaranteed by the U.S. government or any of its agencies or instrumentalities, if, as a result (i) more than 5% of a Fund's total assets would be invested in the securities of that issuer,[35] or (ii) a Fund would hold more than 10% of the outstanding voting securities of that issuer. For the purpose of this restriction, each state and each separate political subdivision, agency, authority or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, are treated as separate issuers of municipal bonds. The PIMCO Real Return Exchange-Traded Fund will be non-diversified,[36] which means that it may invest its assets in a smaller number of issuers than a diversified fund.

Each Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.[37]

The Funds will not invest in options contracts, futures contracts, or swap agreements.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Funds' Shares is determined by dividing the total value of the applicable Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. Fund Shares will be valued as of the close of regular trading (normally 4:00 p.m.,

[29] *See* note 45, *infra.*

[30] A convertible security is a bond, debenture, note, preferred stock, or other security that entitles the holder to acquire common stock or other equity securities of the same or a different issuer. A convertible security generally entitles the holder to receive interest paid or accrued until the convertible security matures or is redeemed, converted or exchanged.

[31] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[32] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act.

[33] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[34] The Funds' policies with respect to the concentration of investments in a particular industry is disclosed in the Trust's Registration Statement.

[35] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

[36] A ''non-diversified company,'' as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

[37] 26 U.S.C. 851.

E.T.) on each day NYSE Arca is open. On each business day, before commencement of trading in Fund Shares on NYSE Arca, each Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day. Information that becomes known to a Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. Each Fund will reserve the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, as is the case for most securities traded over-the-counter, based on quotes obtained from a quotation reporting system, established market makers, or independent pricing services. For exchange-traded securities, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds and other equity-related securities, market value also may be determined on the day that the valuation is made based on the applicable exchange's official closing price or last reported sales price. Shares of non-exchange-traded open-end or closed-end management investment companies normally will be valued at their most recently calculated NAV. Fixed Income Instruments, including those to be purchased under firm commitment agreements (other than obligations having a maturity of 60 days or less), will be normally valued on the basis of quotes obtained from brokers and dealers or independent pricing services, which take into account appropriate factors such as institutional-sized trading in similar groups of securities, yield, quality, coupon rate, maturity, type of issue, trading characteristics, and other market data. In addition, Fixed Income Instruments will normally be valued using data reflecting the earlier closing of the principal markets for those assets.

Forwards for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Typically, forwards on Fixed Income Instruments will be marked to market daily.

Additional information regarding the valuation of Fund investments in calculating a Fund's NAV is provided in the Registration Statement.

Portfolio Indicative Value

In order to provide additional information regarding the intra-day value of Shares of the Funds, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association (''CTA'') or other widely disseminated means an updated Portfolio Indicative Value (''PIV'') for each Fund as calculated by an information provider or market data vendor. The PIV will be based upon the current value for the components of a Fund's Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2).

A third party market data provider will calculate the PIV for the Funds. For the purpose of determining a Fund's PIV, the third party market data provider's valuation of forwards will be similar to their valuation of all securities. The third party market data provider will generally use market quotes if available. Where market quotes are not available, they may fair value securities against proxies (such as swap or yield curves).

Each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday. This information may include tickers or other identifiers, or the underlying asset or index.

Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Funds that trade in the secondary market will be ''created'' at NAV by authorized participants only in block-size Creation Units of 50,000 Shares for each Fund or multiples thereof. The Funds will offer and issue Shares at their NAV per Share generally in exchange for a basket of securities held by the Fund (the ''Deposit Securities'') together with a deposit of a specified cash payment (the ''Cash Component''). Alternatively, the Funds may issue Creation Units in exchange for a specified all-cash payment (''Cash Deposit''). Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of securities held by a Fund and/or for a specified amount of cash.

Except when aggregated in Creation Units, Shares will not be redeemable by a Fund. The prices at which creations and redemptions occur will be based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the authorized participant agreement. PIMCO will make available on each business day via the National Securities Clearing Corporation (''NSCC'') or other method of public dissemination, prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m., E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Fund Deposit [38] (based on information at the end of the previous business day). Creations and redemptions must be made by an Authorized Participant or through a firm that is either a participant in the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations.

Impact of Use of Forwards on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of forwards. Market makers and participants should be able to value forwards as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares will trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of forwards. To the extent forwards are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when a Fund processes purchases or redemptions of creation units in-kind.

Availability of Information

The Trust's Web site (*www.pimcoetfs.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-

[38] The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, constitute the ''Fund Deposit,'' which represents the investment amount for a Creation Unit of a Fund.

point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[39] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m., E.T. to 4:00 p.m., E.T.) on the Exchange, each Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day.[40]

On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of a Fund the following information: Ticker symbol (if applicable), name of security and financial instrument, number of shares, if applicable, and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. As noted above, each Fund's disclosure of forward positions will include information that market participants can use to value these positions intraday, and this information may include tickers or other identifiers, or the underlying asset or index. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which will include the security names and quantities of securities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket will represent one Creation Unit of a Fund. The NAV of the Funds will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each business day. Authorized participants may refer to the basket composition file for information regarding Fixed Income Instruments, and any other instrument that may comprise a Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Funds' Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds and other equity-related securities, will be available from the exchange on which such securities are traded. Price information regarding non-exchange-traded open-end or closed-end management investment companies will be available from major market data vendors. Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data vendors. Price information relating to forwards will be available from major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares of each Fund will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares of each Fund will be available via the CTA high-speed line. In addition, the PIV for each Fund, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[41] The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.[42] Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of a Fund inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares of the Funds will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Act,[43] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances,

[39] The Bid/Ask Price of a Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[40] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[41] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from CTA or other data feeds.

[42] *See* NYSE Arca Equities Rule 7.12.

[43] 17 CFR 240.10A–3.

administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[44] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities held by the Funds with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-traded securities held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities held by the Funds from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[45] In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain Fixed Income Instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

With respect to their equity securities investments, the Funds will invest only in U.S. and non-U.S. equity securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of each Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of each Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[46] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares of each Fund will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities held by the Funds with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-traded securities held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities held by the Funds from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain Fixed Income Instruments reported to TRACE. The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, the Funds will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's portfolio holdings. While emerging markets corporate debt securities (excluding commercial paper) generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for each of the Funds, at least 80% of issues of such securities held by a Fund must have $200 million or more par amount outstanding at the time of investment. The Diversified Income Exchange-Traded Fund may invest in both investment grade debt securities and high yield debt securities subject to a maximum of 10% of its total assets in debt securities rated below B by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality. The Low Duration Exchange-Traded Fund and Real Return Exchange-Traded Fund will each invest primarily in investment grade debt securities, but may invest up to 10% of its total assets in high yield debt securities rated B to Ba by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality. The Funds will invest only in U.S. and non-U.S. equity securities that trade in markets that are members of the ISG, which includes all U.S. national

[44] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[45] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[46] 15 U.S.C. 78f(b)(5).

securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Funds may hold up to an aggregate amount of 15% of their respective net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. Each Fund may invest up to 20% of its assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Funds will not invest in options contracts, futures contracts, or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for such Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds and other equity-related securities, will be available from the exchange on which such securities are traded. Price information regarding non-exchange-traded open-end or closed-end management investment companies will be available from major market data vendors. Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data vendors. Price information relating to forwards will be available from major market data vendors. The Trust's Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that invest primarily in debt securities, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–106 and should be submitted on or before November 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26410 Filed 11–4–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70776; File No. SR–FINRA–2013–031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change Relating to Participation on the Alternative Display Facility

October 30, 2013.

I. Introduction

On July 18, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change to amend FINRA Rules 6271 and 6272 regarding the requirements for members seeking registration as FINRA Alternative Display Facility (''ADF'') Market Participants (the ''Proposal'').

The Proposal was published for comment in the **Federal Register** on August 1, 2013.[3] The Commission received one comment letter on the Proposal.[4] On September 10, 2013, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to approve or disapprove the Proposal, to October 30, 2013.[5] On October 25, 2013, FINRA responded to the comment letter.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the Proposal.

II. Background

Current ADF Registration Requirements

The ADF is a quotation collection and trade reporting facility. According to FINRA, the ADF provides (1) ADF market participants (*i.e.,* ADF-registered market makers (''ADF Market Makers'') or electronic communications networks (''ECNs'' and, with ''ADF Market Makers'', ''ADF Market Participants'')) with the ability to post quotations or display orders in NMS stocks and (2) all member firms that participate in the ADF the ability to view quotations and report transactions in NMS stocks to the Securities Information Processors (''SIPs'') for consolidation and dissemination of data to vendors and ADF Market Participants.[7] FINRA states that the ADF is also designed to deliver real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.[8]

FINRA rules provide that ADF Market Participants (*i.e.,* either registered reporting ADF Market Makers or registered reporting ADF ECNs)[9] must register as ADF market makers or ECNs before making a market or displaying orders on the ADF.[10] Members are required to register as ADF Market Participants by applying to FINRA, which includes certifying the member's good standing with FINRA and demonstrating compliance with the net capital and other financial responsibility provisions of the Act.[11] Before displaying quotations or orders on the ADF, ADF Trading Centers[12] must also execute and comply with a Certification Record to certify the ADF Trading Center's compliance efforts with its obligations under Regulation NMS.[13]

Status of the ADF and Other FINRA Transparency Facilities

According to FINRA, no member has registered with FINRA as a registered reporting ADF Market Maker since the ADF was launched in 2002, and there have been four members that, at various points in time, were registered as registered reporting ADF ECNs.[14] Since the second quarter of 2010, FINRA states that there have been no ADF Market Participants.[15]

FINRA states that in 2011, it began the process of updating and migrating all of its transparency facilities (including the FINRA Trade Reporting Facilities, the Trade Reporting and Compliance Engine (''TRACE''), and the ADF) off of independent technology platforms and onto a new, single, updated technology platform known as the Multi Product Platform (''MPP'').[16] FINRA originally scheduled the migration of the ADF onto MPP last, anticipating onboarding of a new ADF Market Participant no sooner than mid-2014.[17]

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from David Harris, Chairman and CEO, National Stock Exchange, Inc., dated September 9, 2013 (''NSX Letter'').

[5] *See* Securities Exchange Act Release No. 70358, 78 FR 56967 (September 16, 2013) (SR–FINRA–2013–031).

[6] *See* Letter from Stephanie M. Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA to the Commission dated October 25, 2013, (''FINRA Response'').

[7] *See* Notice, 78 FR at 46652. The ADF was initially approved by the Commission on July 24, 2002, in connection with the SEC's approval of SuperMontage and Nasdaq's registration as a national securities exchange. *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002); *see also* NASD *Notice to Members* 02–45 (August 2002). At that time, the ADF was approved for Nasdaq-listed securities for a nine-month pilot period to provide FINRA members with an alternative to the Nasdaq systems for reporting quotations and transactions in Nasdaq UTP Plan securities. On September 28, 2006, the SEC approved amendments to extend the ADF's functionality to all NMS stocks. *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006); *see also* NASD *Notice to Members* 06–67 (November 2006). The ADF was approved on a permanent basis for NMS stocks on January 26, 2007. *See* Securities Exchange Act Release No. 55181 (January 26, 2007), 72 FR 5093 (February 2, 2007).

[8] *See* 17 CFR 242.600.

[9] *See* FINRA Rule 6220(a)(3), (12), (13).

[10] *See* FINRA Rule 6271.

[11] *See* FINRA Rule 6271(b).

[12] An ''ADF Trading Center'' is a registered reporting ADF Market Maker or registered reporting ADF ECN that is a ''Trading Center,'' as defined in Rule 600(b)(78) of SEC regulation NMS, and that is certified to display its quotations or orders through the ADF. *See* FINRA Rule 6220(a)(4); *see also* 17 CFR 242.600(b)(87).

[13] *See* FINRA Rules 6220(a)(5), 6250(a)(7); NASD *Notice to Members* 06–67 (November 2006); *see also* SR–NASD–2006–091, Exhibit 3.

[14] *See* Notice, 78 FR at 46653.

[15] *See id.*

[16] *See id.*

[17] *See id.* After the ADF is migrated to MPP, however, FINRA claims that it will only have the ADF base infrastructure completed. FINRA

Continued

According to FINRA, several of its members have discussed the possibility with FINRA of becoming an ADF Market Participant, and some have asked whether the migration of the ADF to MPP could be accelerated.[18] FINRA states that such acceleration requires delaying the migration of other FINRA facilities onto MPP, reallocating resources, shifting scheduling, and implementing ADF-specific enhancements and hosting in the new technology environment—all of which, in turn, impose significant costs on FINRA, including prolonging the substantially higher expenses associated with the legacy OTC Equity Trade Reporting Facility (''ORF'') infrastructure (i.e., legacy ORF support costs are significantly higher than the expected costs of supporting the ORF in the new MPP technology environment).[19] In addition to the costs of accelerating the migration of the ADF onto MPP, FINRA claims that bringing the new ADF base infrastructure live in the MPP technology environment to accommodate an ADF Market Participant will impose significant direct costs on FINRA related to building and testing the new ADF component on the MPP infrastructure and also related to paying for SIP capacity usage allocations as well as various related costs.[20] FINRA estimates that the MPP component re-sequencing necessary to accommodate ADF acceleration and the costs associated with bringing the ADF base infrastructure live will conservatively cost FINRA in excess of $3 million.[21]

Proposed Amendments to the ADF Rules

FINRA proposes to consolidate into a single rule (FINRA Rule 6271) the existing requirements that a member must meet to register as an ADF Market Participant and introduce new requirements that potential ADF Market Participants must meet to participate on the ADF. According to FINRA, these new requirements are intended to mitigate the substantial financial risks to FINRA of accelerating the migration of the ADF onto MPP or of building out the ADF base platform to accommodate an ADF Market Participant.[22]

ADF Deposit Amount

The Proposal would, in part, add several new requirements into the application that members must complete to become ADF Market Participants. The new provisions require that a member seeking to become an ADF Market Participant: (i) Provide FINRA with reasonable monthly projections of the volume of data that the member anticipates submitting to the ADF; (ii) agree to submit the ADF Deposit Amount[23] in five equal installments into an escrow account at a bank mutually acceptable to the member and FINRA on a timetable as agreed to by the member and FINRA (the ''ADF Escrow Account''); (iii) agree that failing to submit quotes and report trades to the ADF for a two-year period (the ''ADF Quoting Term'') will result in the forfeiture of some or all of the ADF Deposit Amount; (iv) agree that failing to submit 75% of the member's trade and quote volume in NMS stocks to the ADF (the ''ADF Quoting Requirement'') will result in the forfeiture of some or all of the ADF Deposit Amount; and (v) agree to the other ADF Deposit Terms set forth in the rule.

FINRA contends that these new provisions are designed to ensure that FINRA can recover a portion of the costs associated with accelerating the migration of the ADF to MPP and bringing a new ADF Market Participant onto the ADF if the ADF Market Participant fails to participate on the ADF as anticipated. FINRA also argues that certain provisions of the application are designed to (1) provide FINRA the information necessary to ensure the ADF can accommodate the volume of data the member anticipates submitting to the ADF and (2) establish the basis upon which FINRA will be safeguarded by ensuring that the potential ADF Market Participant will bear some of the financial responsibility should FINRA undertake the efforts and incur the costs necessary to bring the ADF Market Participant onto the ADF, only to have the ADF Market Participant fail to participate at all or at the agreed level.[24]

estimates that it would take at least an additional six months to complete further specific build-outs are necessary to accommodate an individual ADF Market Participant seeking to quote on or report trades to the ADF. To determine the specific build-outs necessary to support a new ADF Market Participant, a member would need to provide FINRA with estimated volume projections of quotation and trade reporting activity that would flow through the ADF. *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.*

[22] *See id.* For example, FINRA Rule 6271 would specify that a member seeking registration as an ADF Market Participant must file an application with FINRA, execute the Certification Record, and execute a Participant Agreement. Rule 6271(a)(1) would require a potential ADF Market Participant to file an application with FINRA in which the member would provide various specifications and certifications.

The first three requirements of the application, which specify whether the member is seeking registration in Nasdaq and/or CQS securities, certify the member's good standing with FINRA, and demonstrate compliance with the net capital and other financial responsibility provisions of the Act, are the same as the requirements currently in Rule 6271(b). The Proposal would also codify other current requirements into a single rule. *See id.,* 78 FR at 46654.

[23] The Proposal requires potential ADF Market Participants to agree to submit an ''ADF Deposit Amount'' in five equal installments into an escrow account. The proposed rule change defines the ''ADF Deposit Amount'' as $500,000 if the member requests that FINRA accelerate the ADF migration or if the member begins quoting on or reporting trades to the ADF within 90 calendar days after an ADF Market Participant that requested acceleration of the ADF migration begins quoting on or reporting trades to the ADF. For all other ADF Participants, the ADF Deposit Amount is $250,000. FINRA claims that this is designed to ensure that applicable volume commitments are met. FINRA is proposing to establish the two separate levels of the ADF Deposit Amount to reflect the differing costs FINRA claims it will incur under either of two scenarios. Because FINRA states that it will incur significantly higher costs if the migration of the ADF is accelerated at a member's request, FINRA has proposed an ADF Deposit Amount of $500,000 should the member request such acceleration. Additionally, to ensure that ADF Market Participants benefitting from an acceleration of the ADF onto MPP are treated equally, FINRA proposes to charge $500,000 to any member that begins quoting on or reporting trades to the ADF within ninety (90) days after an existing ADF Market Participant that requested acceleration of the ADF migration begins quoting on or reporting trades to the ADF. According to FINRA, this amount, which, as noted above, FINRA claims is substantially lower than the actual costs FINRA will incur by amending the current MPP migration schedule reflects an appropriate balance between ensuring that FINRA is able to recover a portion of the costs associated with an accelerated migration while not representing a significant financial barrier to participation on the ADF, particularly since members can potentially recover 100% of the ADF Deposit Amount over the two-year term and up to 80% of the ADF Deposit Amount in the first quarter of their participation on the ADF through the credit structure for market data revenue described below. Moreover, FINRA believes that permitting potential participants to earn back the entire deposit amount is more equitable than charging potential ADF Market Participants a one-time payment without the ability to recover some, or all, of the amount. The Proposal reduces the ADF Deposit Amount to $250,000 if the member has not requested an accelerated migration or does not become an ADF Market Participant within 90 days after another ADF Market Participant that had requested acceleration (*i.e.,* paid an escrow amount of $500,000) begins quoting on or reporting trades to the ADF. According to FINRA, the lower amount reflects the fact that the costs to FINRA are significantly reduced under these circumstances because the ADF base platform will have already been migrated to MPP. However, although reduced, FINRA anticipates such costs will still be significantly higher than the $250,000 deposit amount in such a scenario based on costs related to possible additional hardware and software deployments, paying for SIP capacity usage allocations, and costs related to general staff labor, support and testing. *See* Notice, 78 FR at 46654–46655.

[24] The Proposal includes several required terms for the handling of the ADF Deposit Amount (referred to as ''ADF Deposit Terms''), including the methods for ADF Market Participants to recover some or all of the ADF Deposit Amount as a result of meeting its participation commitments (or due to

ADF Market Data Rebate

The Proposal includes a means for ADF Market Participants to earn back the ADF Deposit Amount (the ''ADF Market Data Rebate''). Specifically, the Proposal provides that for every $1.00 received by FINRA from the National Market System (''NMS'') SIP data plans associated with ADF activity attributable, as determined in FINRA's sole discretion, to the member's trading activity on the ADF, the member shall receive $0.50 out of the ADF Escrow Account. Thus, an ADF Market Participant could recover an amount equal to one-half of the SIP market data revenue generated by the ADF Market Participant's trading activity on the ADF. The ADF Market Data Rebate would be paid on a quarterly basis after FINRA has received its quarterly disbursement from the NMS SIP data plans.[25] According to FINRA, this provides for a reasonable opportunity for FINRA to recover some of its costs of re-sequencing the MPP rollout by virtue of the SIP market data revenue split.

In addition, the Proposal provides that the ADF Market Participant is only entitled to receive an amount up to 80% of the ADF Deposit Amount pursuant to this provision and is not entitled to the remaining 20% of the ADF Deposit Amount until the end of the ADF Quoting Term, assuming its trading activity has earned the requisite market data revenue from the SIPs. To the extent that the ADF Market Participant opts to stop participating on the ADF before the end of the ADF Quoting Term or stop meeting its ADF Quoting Requirement before the end of the ADF Quoting Term (*i.e.,* chooses to quote or trade through another trading venue), it would be free to do so but could potentially forfeit some or all of the remaining ADF Deposit Amount.[26]

The Proposal also includes certain provisions designed to protect FINRA if a member requests that the ADF be migrated to MPP on an accelerated basis or if FINRA undertakes efforts to build out the system to support the member, and in either instance, the member fails to participate.[27] The proposed rule change provides that one-fifth of the ADF Deposit Amount shall be released to FINRA if, in any calendar month beginning with the fourth calendar month following certification of the ADF Market Participant to quote on or report trades to the ADF, the ADF Market Participant fails to submit 75% of the member's quoting and trade reporting activity to the ADF.

Finally, the proposed rule change would make clear that a member would become an ADF Market Participant only after (i) the member received a notice of approval from FINRA that its application was accepted, (ii) the member executed the Certification Record, and (iii) FINRA executed the Participant Agreement.

III. Comment Letters

The Commission received one comment letter in response to the Proposal.[28] The commenter, NSX, contends that the Proposal is inconsistent with Sections 15A(b)(5), (6), and (9) of the Act.[29]

Section 15A(b)(5) of the Act mandates that ''[t]he rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.'' [30] NSX argues that that FINRA ''fails to meet its burden of adequately articulating and justifying the reasonableness of the ADF Participant fees.'' [31] In particular, NSX contends that reasonableness of the ADF Deposit Amount and ADF Market Data Rebate can only be determined after analyzing total cost, projected volume, source of funds, and future fees. Accordingly, NSX argues, the Proposal is deficient as it does not disclose the specific percentage that the Deposit Amount is of total development costs.[32] In response, FINRA contends that it has provided enough information to demonstrate that the ADF Deposit Amount is reasonable.[33] In particular, FINRA included detailed cost estimates regarding the accelerated ADF migration. In addition, FINRA notes in establishing the ADF Deposit Amount it considered its ability to recover costs and whether the ADF Deposit Amount would preclude potential ADF Market Participants from using the ADF.[34] Finally, FINRA disputes NSX's argument that it is required to include a forecast of all future fees as part of its analysis of the reasonableness of the fees contemplated in the Proposal.[35]

NSX also argues that FINRA failed to demonstrate that the Proposal constitutes an equitable allocation of fees and other charges consistent with Section 15A(b)(5) of the Act.[36] Specifically, NSX questions whether it is consistent with the Act for FINRA to (1) charge the same ADF Deposit Amount regardless of a potential ADF Participant's use of the ADF and (2) offer the ADF at a cost which will be spread among all FINRA members and not just ADF Participants.[37] FINRA counters that the fixed ADF Deposit Amount is not tied to the amount of usage since costs of on-boarding each participant are fixed and do not vary by ADF Market Participant.[38] In addition, FINRA claims that the ADF Deposit Amount is designed to defray costs but not cover costs entirely. Imposing all costs only on ADF Market Participants, FINRA argues, would discourage new ADF Market Participants from joining the ADF and reduce potential ADF revenue thereby increasing ADF-related losses.[39] Further, FINRA notes that absent the Proposal, FINRA would incur all of the costs regarding the migration

FINRA's inability to meet its obligations) and methods for FINRA to receive the funds if commitments are not met. The proposed rule change retains some flexibility in the precise terms of any agreements between FINRA and potential ADF Market Participants to ensure that any unique circumstances can be addressed by permitting *de minimis* additions or qualifications to the ADF Deposit Terms, provided both FINRA and the member agree to those additions or qualifications. *See* Notice, 78 FR at 46655.

[25] Charges or credits as a result of SIP audit recoveries, which typically are *de minimis* as compared to the overall revenue paid, would not be included in the calculation. *See id.*

[26] *See id.* If FINRA does not make the ADF available within nine months of an ADF Market Participant's first deposit of the ADF Deposit Amount into the ADF Escrow Account, one-fifth of the ADF Deposit Amount will be released from such ADF Escrow Account to the ADF Market Participant. An additional one-fifth of the initial ADF Deposit Amount will be released to the ADF Market Participant every month thereafter that FINRA has not made the ADF available, until all funds have been released from such ADF Escrow Account.

[27] In addition, if a member is sold (other than a sale to an entity that would otherwise meet the FINRA qualifications as an ADF Market Participant), goes out of business, otherwise does not meet its obligations, or fails to complete the process for becoming an ADF Market Participant, the member will forfeit the ADF Deposit Amount, or any lesser amount remaining in the ADF Escrow Account, and all funds will be released from the ADF Escrow Account to FINRA. *See id.*

[28] *See* NSX Letter.

[29] *See* NSX Letter, at 1.

[30] 15 U.S.C. 78*o*–3(b)(5).

[31] *Id.* at 1.

[32] *See* NSX Letter, at 2.

[33] *See* FINRA Response, at 2.

[34] *See* FINRA Response, at 3–4.

[35] *Id.* at 5. NSX also argues that the Proposal is not consistent with Section 15A(b)(6) of the Act, which provides that ''the rules of an association are designed . . . to protect investors and the public interest; and are not designed to permit unfair discrimination ''between customers, issuers, brokers, or dealers.'' 15 U.S.C. 78*o*–3(b)(5). Specifically, NSX claims that the Proposal may raise issues with respect to an ADF Participant's ability to comply with its best execution obligation. *See* NSX Letter, at 5. FINRA responds that this concern is misplaced since the Quoting Requirement relates to posting of quotes and the reporting of trades, whereas best execution obligation implicates a broker-dealer's handling of customer orders for execution. *See* FINRA Response, at 6 n.11.

[36] *See* NSX Letter, at 3.

[37] *Id.* at 3–4.

[38] *See* FINRA Response, at 3.

[39] *Id.*

and operation of the ADF without the potential to offset such costs.[40] Finally, FINRA argues that the ADF Deposit Amount reflects an ''appropriate balance between helping to defray the costs of migrating and operating the ADF while not making participation in the ADF cost-prohibitive'' that is reasonable in light of projected $3 million total costs cited in its Proposal and an equitable allocation among ADF Participants and its member firms.[41]

Section 15A(b)(9) of the Act provides that ''[t]he rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.'' [42] NSX argues that FINRA fails to adequately address whether the Proposal imposes a burden on competition for other self-regulatory organization (''SRO''s) such as NSX.[43] According to NSX, the Proposal is an unfair subsidy of FINRA's trading facility. In addition, NSX claims that the ADF Deposit Amount and the requirement to send 75% of quotes and trades to FINRA amount to an unprecedented burden on competition. NSX argues that the ADF Quoting Requirement would make it economically unfeasible for any other SRO that provides order delivery functionality to compete with FINRA. FINRA responds that the ADF Deposit Amount is not an unfair subsidy; rather it is designed to recoup expenses.[44] Moreover, FINRA notes that the ADF Quoting Requirement is not an unnecessary or appropriate burden on competition because it is not a requirement to use the ADF, and is only a means to earn back the ADF Deposit Amount.[45] According to FINRA, therefore, meeting the ADR Quoting Requirement is voluntary and at the discretion of an ADF Participant.[46]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–FINRA–2013–031 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposal should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposal that are discussed below. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment to inform the Commission's analysis of whether to approve or disapprove the Proposal.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 15A(b)(9) of the Act [47] requires that FINRA rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title. As noted above, NSX raises concerns, among other things, as to whether the Proposal creates a burden on competition that is not necessary or appropriate in furtherance of the Act, including whether it would impose a burden on competition for other self-regulatory organizations such as NSX. The Commission believes that questions remain as to whether the Proposal is consistent with the requirements of Section 15A(b)(9) of the Act.

V. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the Proposal. In particular, the Commission invites the written views of interested persons concerning whether the Proposals are inconsistent with Section 15A(b)(9) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[48]

Interested persons are invited to submit written data, views and arguments regarding whether the Proposals should be disapproved by November 26, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 10, 2013. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–031. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposals that are filed with the Commission, and all written communications relating to the Proposals between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–031 and should be submitted on or before November 26, 2013. Rebuttal comments should be submitted by December 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[49]

Kevin M. O'Neill,

Deputy Secretary.

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[40] *See id.,* at 6.

[41] *See id.,* at 7.

[42] 15 U.S.C. 78*o*–3(b)(9).

[43] *Id.*

[44] *See* FINRA Response, 5 at 6.

[45] *Id.* at 6.

[46] *Id.*

[47] 15 U.S.C. 78*o*–3(b)(9).

[48] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular Proposals by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[49] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70773; File No. SR–NYSEArca-2013–86]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Franklin Short Duration U.S. Government ETF Under NYSE Arca Equities Rule 8.600

October 30, 2013.

I. Introduction

On August 27, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Franklin Short Duration U.S. Government ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on September 16, 2013.[3] On October 28, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by Franklin ETF Trust (''Trust''). The Trust will be registered with the Commission as an open-end management investment company.[5] Franklin Advisers, Inc. will serve as the investment manager to the Fund (''Manager''). Franklin Templeton Distributors, Inc. will be the principal underwriter and distributor of the Fund's Shares. Franklin Templeton Services, LLC will serve as administrator for the Fund and The Bank of New York Mellon will serve as sub-administrator for the Fund. The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund. The Exchange represents that the Manager is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the Fund's portfolio.[6] The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[7] as provided by NYSE Arca Equities Rule 5.3.[8]

Principal Investments

The Fund's investment goal is to provide a high level of current income, consistent with prudent investing, while seeking preservation of capital. The Fund will seek to achieve its investment goal by investing, under normal market conditions,[9] at least 80% of its net assets in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities. The Fund currently targets an estimated average portfolio duration of three (3) years or less. The Manager calculates the duration of the portfolio by modeling the cash flows of all the individual holdings, including the impact of prepayment variability and coupon adjustments where applicable, to determine the duration of each holding and then aggregating based on the size of the position. In performing this duration calculation, the Manager utilizes third-party models as adjusted based on the Manager's market expectations with respect to interest rates, borrower-level factors affecting credit availability, and the condition of the housing market, as well as broader economic factors, among other things, consistent with industry practice.

The Fund generally will invest a substantial portion of its assets in mortgage-backed securities [10] issued or guaranteed by the U.S. government or its agencies or instrumentalities, including adjustable-rate mortgage securities, but the Fund also will invest in direct obligations of the U.S. government (such as Treasury bonds, bills, and notes) and in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, including government sponsored entities. All of the Fund's principal investments will be debt securities, including bonds, notes, and debentures.

The mortgage-backed securities in which the Fund will substantially invest are issued or guaranteed by the U.S. government or its agencies or instrumentalities, such as Ginnie Mae, or by U.S. government-sponsored entities, such as Fannie Mae and Freddie Mac. Most mortgage-backed securities are pass-through securities, which means that they provide investors with monthly payments consisting of a pro rata share of both regular interest and principal payments and unscheduled prepayments on the underlying mortgage loans. Because prepayment rates of individual mortgage pools vary widely, the average life of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70356 (Sept. 10, 2013), 78 FR 56970 (''Notice'').

[4] Amendment No. 1 amended the proposal to provide that the Fund will issue and redeem Shares on a continuous basis at net asset value in aggregations of 25,000 Shares (''Creation Units''), rather than 50,000 Shares. Because Amendment No. 1 does not materially affect the substance of the proposed rule change, it does not require notice and comment.

[5] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On February 7, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–186504 and 811–22801) (''Registration Statement''). The Trust filed an application on June 8, 2012, and amendments to the application on October 26, 2012 and December 18, 2012, requesting an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14042) (''Exemptive Application''). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30350 (Jan. 15, 2013) (''Exemptive Order''). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order. *See* Notice, *supra* note 3, 78 FR at 56971, n. 5.

[6] *See id.* The Exchange states that in the event (a) the Manager or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to its relevant personnel or the broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. *See id.*

[7] 17 CFR 240.10A–3.

[8] *See* Notice, *supra* note 3, 78 FR at 56973.

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] Mortgage-backed securities represent an interest in a pool of mortgage loans made by banks and other financial institutions to finance purchases of homes, commercial buildings, and other real estate. The individual mortgage loans are packaged or ''pooled'' together for sale to investors. As the underlying mortgage loans are paid off, investors receive principal and interest payments. These securities may be fixed-rate or adjustable-rate mortgage-backed securities (''ARMS''). Further, these securities can also be categorized as collateralized mortgage obligations (''CMOs'') or real estate mortgage investment conduits (''REMICs'') where they are divided into multiple classes with each class being entitled to a different share of the principal and interest payments received from the pool of underlying assets.

particular pool cannot be predicted accurately. Adjustable-rate mortgage-backed securities include ARMS and other mortgage-backed securities with interest rates that adjust periodically to reflect prevailing market interest rates.

The Fund may invest in securities with various levels of credit support,[11] including, but not limited to, those issued or guaranteed by the Federal Home Loan Banks, Veterans Administration, Federal Housing Authority, Export-Import Bank of the United States, Overseas Private Investment Corporation, Commodity Credit Corporation, Small Business Administration, U.S. Agency for International Development, Tennessee Valley Authority, and Farm Credit System.

The Fund may invest in callable agency securities, which give the issuer (the U.S. government agency) the right to redeem the security prior to maturity. The Fund may also invest in U.S. government inflation-indexed securities.[12] Additionally, the Fund may invest in certain mortgage dollar rolls.[13] The Fund will invest only in covered mortgage dollar rolls, meaning that the Fund establishes a segregated account with liquid securities equal in value to the securities it will repurchase. The Fund intends to enter into mortgage dollar rolls only with high quality securities dealers and banks as determined by the Manager under board approved counterparty review procedures.

Other Investments

When the Manager believes that market or economic conditions are unfavorable for investors, the Manager may invest up to 100% of the Fund's assets in a temporary defensive manner by holding all or a substantial portion of its assets in cash, cash equivalents, or other high quality short-term investments. Temporary defensive investments generally may include short-term U.S. government securities, high-grade commercial paper, bank obligations, repurchase agreements, money market fund shares (including shares of an affiliated money market fund), and other money market instruments. The Manager also may invest in these types of securities or hold cash while looking for suitable investment opportunities or to maintain liquidity.[14]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager.[15] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may invest in other investment companies to the extent permitted by the 1940 Act, Commission rules thereunder, and exemptions thereto. Section 12(d)(1)(A) of the 1940 Act requires that, as determined immediately after a purchase is made, (i) not more than 5% of the value of the Fund's total assets will be invested in the securities of any one investment company, (ii) not more than 10% of the value of the Fund's total assets will be invested in securities of investment companies as a group, and (iii) not more than 3% of the outstanding voting stock of any one investment company will be owned by the Fund. Certain exceptions to these limitations may apply, and the Fund may also rely on any future applicable Commission rules or orders that provide exceptions to these limitations.

The Fund may invest up to 20% of its net assets in securities not issued or guaranteed by the U.S. government or its agencies or instrumentalities, including mortgage backed securities. These investments may include investment-grade debt securities.[16] The Fund will not invest in non-investment-grade debt securities. The Fund may also lend a portfolio of securities up to one-third of the value of its total assets (measured at the time of the most recent loan). In exchange, the Fund will receive cash collateral from a borrower at least equal to the value of the security loaned by the Fund. Cash collateral typically consists of any combination of cash, securities issued by the U.S. government or its agencies or instrumentalities, and irrevocable letters of credit. Securities will only be loaned to parties that meet creditworthiness standards approved by the Fund's board. The Fund may also invest in multi-class pass-through securities; when-issued, delayed delivery, and to-be-announced transactions; callable securities; Franklin Templeton money market funds; repurchase agreements; U.S. Treasury rolls; unrated debt securities deemed by the Manager to be of comparable quality to investment-grade debt securities; variable rate securities; and zero coupon, deferred interest, and pay-in-kind bonds.

The Fund will not invest in equity securities other than possible investments in shares of other investment companies as noted above.

The Fund will be classified as a ''diversified'' investment company under the 1940 Act.

The Fund will not invest more than 25% of the Fund's net assets in

[11] Government agency or instrumentality securities have different levels of credit support. For example, Ginnie Mae securities carry a guarantee as to the timely repayment of principal and interest that is backed by the full faith and credit of the U.S. government. However, the full faith and credit guarantee does not apply to the market prices and yields of the Ginnie Mae securities or to the net asset value (''NAV''), trading price, or performance of the Fund, which will vary with changes in interest rates and other market conditions. Fannie Mae and Freddie Mac pass-through mortgage certificates are backed by the credit of the respective instrumentality and are not guaranteed by the U.S. government. Other securities issued by government agencies or instrumentalities, including government sponsored entities, may only be backed by the credit worthiness of the issuing institution, not the U.S. Government, or the issuers may have the right to borrow from the U.S. Treasury to meet their obligations.

[12] Inflation-indexed securities are fixed-income securities that are structured to provide protection against inflation. The value of the security's principal or the interest income paid on the security is adjusted to track changes in an official inflation measure. The U.S. Treasury uses the Consumer Price Index for Urban Consumers as the inflation measure for the inflation-indexed securities it issues.

[13] In a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon, and maturity) securities on a future date. During the period between a sale and repurchase, the Fund will forgo principal and interest paid on the mortgage-backed securities. The Fund will earn or lose money on a mortgage dollar roll from any difference between the sale price and the future purchase price. In a sale and repurchase, the Fund also earns money on the interest earned on the cash proceeds of the initial sale.

[14] Circumstances under which the Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] In reaching liquidity decisions, the Manager may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[16] Debt securities that are rated Baa or higher by Moody's or rated BBB or higher by S&P, or that are unrated securities deemed by the Manager to be of comparable quality, are considered to be ''investment grade.''

securities of issuers in any one industry (other than securities issued or guaranteed by the U.S. government or any of its agencies or instrumentalities or securities of other investment companies, whether registered or excluded from registration under Section 3(c) of the 1940 Act).

Additionally, the Fund will not purchase the securities of any one issuer (other than the U.S. government or any of its agencies or instrumentalities or securities of other investment companies, whether registered or excluded from registration under Section 3(c) of the 1940 Act) if immediately after such an investment (i) more than 5% of the value of the Fund's total assets would be invested in that issuer or (ii) more than 10% of the outstanding voting securities of that issuer would be owned by the Fund, except that up to 25% of the value of the Fund's total assets may be invested without regard to these 5% and 10% limitations.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

Consistent with the Exemptive Order, to pursue its investment goal, the Fund may invest in interest rate, fixed income index, bond, and U.S. Treasury futures contracts. The use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates or durations. These derivatives may be used to hedge risks associated with the Fund's other portfolio investments. The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund will not otherwise invest in options, futures contracts, or swap agreements. The Fund's investments will be consistent with its investment goal and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share (''NAV''), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.[17]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[18] and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.[22] In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. Eastern time to 4:00 p.m. Eastern time).[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[24] The Fund will calculate the NAV each business day normally as of the close of regular trading on the New York Stock Exchange (normally, 4:00 p.m. Eastern time).[25] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.[26] Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.[27] The intra-day, closing, and settlement prices of the portfolio securities and other Fund investments will also be readily available from the national securities exchanges trading those securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.[28] The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.[29]

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[30] In addition, for in-kind creations, the basket composition file will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation.[31] Further, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted.[32] The Exchange may halt trading in the Shares if trading is not occurring in the securities or the

[17] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[18] 15 U.S.C. 78f.

[19] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] *See* Notice, *supra* note 3, 78 FR at 56975.

[23] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from the CTA or other data feeds. *See id.*

[24] *See id.* On a daily basis, the Manager will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge. *See id.*

[25] *See id.* at 56974.

[26] *See id.* at 56975.

[27] *See id.*

[28] *See id.*

[29] *See id.* at 56974–75.

[30] *See id.* at 56973.

[31] *See id.* at 56975.

[32] *See id.*

financial instruments constituting the Disclosed Portfolio of the Fund or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[33] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[34] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[35] The Exchange also states that the Manager is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.[36] The Exchange states that, on its behalf, the Financial Industry Regulatory Authority (''FINRA'') will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') and that FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities.[37] In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[38]

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[39] In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The trading surveillance procedures administered by FINRA on behalf of the Exchange are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[40] as provided by NYSE Arca Equities Rule 5.3.

(6) Under normal market conditions, at least 80% of the Fund's net assets will be invested in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities.

(7) The Fund will not invest in options, futures contracts, or swap agreements, other than investments in interest rate, fixed income index, bond, and U.S. Treasury futures contracts as permitted by the Exemptive Order.

(8) No more than 20% of the value of the Fund's net assets will be invested in derivative instruments, and any such derivative investments will be consistent with the Fund's investment goal and will not be used to enhance leverage.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager; will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of then-current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

(10) The Fund may lend a portfolio of securities up to one-third of the value of its total assets (measured at the time of the most recent loan), and in exchange, the Fund will receive from the borrower or borrowers cash collateral at least equal to the value of the securities loaned by the Fund.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[41] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–NYSEArca–2013–86), as modified by Amendment

[33] *See id. See also* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. *See* Notice, *supra* note 3, 78 FR at 56975.

[34] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[35] *See* Notice, *supra* note 3, 78 FR at 56976.

[36] *See supra* note 6 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[37] *See* Notice, *supra* note 3, 78 FR at 56976.

[38] *See id.*

[39] *See id.* at 56975.

[40] 17 CFR 240.10A–3.

[41] 15 U.S.C. 78f(b)(5).

[42] 15 U.S.C. 78s(b)(2).

No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–26409 Filed 11–4–13; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2013–0057]

Cost-of-Living Increase and Other Determinations for 2014

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: Under title II of the Social Security Act (Act), there will be a 1.5 percent cost-of-living increase in Social Security benefits effective December 2013. As a result of this increase, the following items will increase for 2014:

(1) The maximum Federal Supplemental Security Income (SSI) monthly benefit amounts for 2014 under title XVI of the Act will be $721 for an eligible individual, $1,082 for an eligible individual with an eligible spouse, and $361 for an essential person;

(2) The special benefit amount under title VIII of the Act for certain World War II veterans will be $540.75 for 2014;

(3) The student earned income exclusion under title XVI of the Act will be $1,750 per month in 2014, but not more than $7,060 for all of 2014;

(4) The dollar fee limit for services performed as a representative payee will be $40 per month ($77 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2014; and

(5) The dollar limit on the administrative-cost fee assessment charged to an appointed representative such as an attorney, agent, or other person who represents claimants will be $89 beginning in December 2013.

The national average wage index for 2012 is $44,321.67. This index affects the following amounts:

(1) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base will be $117,000 for remuneration paid in 2014 and self-employment income earned in taxable years beginning in 2014;

(2) The monthly exempt amounts under the OASDI retirement earnings test for taxable years ending in calendar year 2014 will be $1,290 for beneficiaries who will attain their Normal Retirement Age (NRA) (defined below) after 2014 and $3,450 for those who attain NRA in 2014;

(3) The dollar amounts (''bend points'') used in the primary insurance amount (PIA) benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2014 will be $816 and $4,917;

(4) The bend points used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2014 will be $1,042, $1,505, and $1,962;

(5) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2014 will be $1,200;

(6) The ''old-law'' contribution and benefit base under title II of the Act will be $87,000 for 2014;

(7) The monthly amount deemed to constitute substantial gainful activity (SGA) for statutorily blind individuals in 2014 will be $1,800, and the corresponding amount for non-blind disabled persons will be $1,070;

(8) The earnings threshold establishing a month as a part of a trial work period will be $770 for 2014; and

(9) Coverage thresholds for 2014 will be $1,900 for domestic workers and $1,600 for election officials and election workers.

FOR FURTHER INFORMATION CONTACT: Susan C. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3000. Information relating to this announcement is available on our Internet site at *www.socialsecurity.gov/oact/cola/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213, or visit our Internet site at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, we must publish within 45 days after the close of the third calendar quarter of 2013 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, we must publish on or before November 1 the national average wage index for 2012 (section 215(a)(1)(D)), the OASDI fund ratio for 2013 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2014 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2014 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2014 (section 203(f)(8)(A)), the formula for computing a PIA for workers who first become eligible for benefits or die in 2014 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2014 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The cost-of-living increase is 1.5 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 1.5 percent for individuals eligible for December 2013 benefits, payable in January 2014. This increase is based on the authority contained in section 215(i) of the Act.

Pursuant to section 1617 of the Act, Federal SSI payment levels will also increase by 1.5 percent effective for payments made for the month of January 2014 but paid on December 31, 2013.

Computation

Section 215(i)(1)(B) of the Act defines a ''computation quarter'' to be a third calendar quarter in which the average Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers exceeded the average CPI in the previous computation quarter. The last cost-of-living increase, effective for those eligible to receive title II benefits for December 2012, was based on the CPI increase from the third quarter of 2011 to the third quarter of 2012. Accordingly, the last computation quarter is the third quarter of 2012. The law stipulates that a cost-of-living increase for benefits is determined based on the percentage increase, if any, in the CPI from the last computation quarter to the third quarter of the current year. Therefore, we compute the increase in the CPI from the third quarter of 2012 to the third quarter of 2013.

Section 215(i)(1) of the Act provides that the CPI for a cost-of-living computation quarter is the arithmetic mean of this index for the 3 months in that quarter. In accordance with 20 CFR 404.275, we round the arithmetic mean, if necessary, to the nearest 0.001. The CPI for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2012, is: For July 2012, 225.568; for August 2012, 227.056; and for September 2012, 228.184. The arithmetic mean for that calendar quarter is 226.936. The corresponding CPI for each month in the quarter ending September 30, 2013, is:

[43] 17 CFR 200.30–3(a)(12).

For July 2013, 230.084; for August 2013, 230.359; and for September 2013, 230.537. The arithmetic mean for this calendar quarter is 230.327. The CPI for the calendar quarter ending September 30, 2013, exceeds that for the calendar quarter ending September 30, 2012 by 1.5 percent (rounded to the nearest 0.1). Therefore, beginning December 2013 a cost-of-living benefit increase of 1.5 percent is effective for benefits under title II of the Act.

Section 215(i) also specifies that a benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the OASDI fund ratio for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the OASDI Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. For 2013, the OASDI fund ratio is assets of $2,732,334 million divided by estimated expenditures of $825,382 million, or 331.0 percent. Because the 331.0 percent OASDI fund ratio exceeds 20.0 percent, the benefit increase for December 2013 is not limited.

Program Amounts That Change Based on the Cost-of-Living Increase

The following program amounts change based on the cost-of-living increase: (1) Title II benefits; (2) title XVI benefits; (3) title VIII benefits; (4) the student earned income exclusion; (5) the fee for services performed by a representative payee; and (6) the appointed representative fee assessment.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, for workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 2014, benefits will increase by 1.5 percent beginning with benefits for December 2013, which are payable in January 2014. In the case of first eligibility after 2013, the 1.5 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. The table is available on the Internet at *www.socialsecurity.gov/oact/ProgData/tableForm.html* or by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act requires that, when we determine an increase in Social Security benefits, we will publish in the **Federal Register** a revision of the range of the PIAs and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as special minimum benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 years of coverage. To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the old-law contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of PIAs and corresponding maximum family benefit amounts after the 1.5 percent benefit increase.

SPECIAL MINIMUM PIAS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2013

Number of years of coverage	PIA	Maximum family benefit
11	$39.30	$59.80
12	80.20	121.40
13	121.20	182.80
14	161.90	243.90
15	202.40	304.90
16	243.50	366.50
17	284.40	428.20
18	325.30	489.20
19	366.10	550.60
20	407.10	611.50
21	448.00	673.30
22	488.60	734.50
23	530.10	796.70
24	570.90	857.50
25	611.50	918.20
26	653.00	980.60
27	693.40	1,041.70
28	734.30	1,102.80
29	775.20	1,164.60
30	816.00	1,225.20

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum Federal SSI benefit amounts for the aged, blind, and disabled will increase by 1.5 percent effective January 2014. For 2013, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$710, $1,066, and $356, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $8,529.32, $12,792.55, and $4,274.43. For 2014, these yearly unrounded amounts increase by 1.5 percent to $8,657.26, $12,984.44, and $4,338.55, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2014, are $8,652, $12,984, and $4,332. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2014–$721, $1,082, and $361, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII Benefit Amount

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Accordingly, the monthly benefit for 2014 under this provision is 75 percent of $721, or $540.75.

Student Earned Income Exclusion

A blind or disabled child who is a student regularly attending school, college, university, or a course of vocational or technical training can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2013 is $1,730 per month, but not more than $6,960 in all of 2013. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2014, we increase the corresponding unrounded amount for 2013 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2013 is $1,725.70. We increase this amount by 1.5 percent to $1,751.59, which we then round to $1,750. Similarly, we increase the unrounded yearly amount for 2013, $6,956.28, by 1.5 percent to $7,060.62 and round this to $7,060. Accordingly, the maximum amount of the income exclusion applicable to a student in 2014 is $1,750 per month but not more than $7,060 in all of 2014.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from a beneficiary a monthly fee for expenses incurred in providing services performed as such beneficiary's representative payee. In 2013 the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $39 per month ($76 per month in any case in which the beneficiary is entitled to disability benefits and has an alcoholism or drug addiction condition that makes the individual incapable of managing such benefits). The dollar fee limits are subject to increase by the cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Accordingly, we increase the current amounts by 1.5 percent to $40 and $77 for 2014.

Appointed Representative Fee Assessment

Under sections 206(d) and 1631(d) of the Act, whenever we pay a fee to a representative such as an attorney, agent, or other person who represents claimants, we must impose on the representative an assessment to cover administrative costs. Such assessment is no more than 6.3 percent of the representative's authorized fee or, if lower, a dollar amount that is subject to increase by the cost-of-living increase. We derive the dollar limit for December 2013 by increasing the unrounded limit for December 2012, $88.35, by 1.5 percent, which is $89.68. We then round $89.68 to the next lower multiple of $1. The dollar limit effective for December 2013 is, therefore, $89.

National Average Wage Index for 2012

Computation

We determined the national average wage index for calendar year 2012 based on the 2011 national average wage index of $42,979.61, announced in the **Federal Register** on October 30, 2012 (77 FR 65754), along with the percentage increase in average wages from 2011 to 2012, as measured by annual wage data. We tabulate the annual wage data, including contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $41,211.36 and $42,498.21 for 2011 and 2012, respectively. To determine the national average wage index for 2012 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2011 national average wage index of $42,979.61 by the percentage increase in average wages from 2011 to 2012 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2011 ($42,979.61) by the ratio of the average wage for 2012 ($42,498.21) to that for 2011 ($41,211.36) produces the 2012 index, $44,321.67. The national average wage index for calendar year 2012 is about 3.12 percent higher than the 2011 index.

Program Amounts That Change Based on the National Average Wage Index

The following amounts change with annual changes in the national average wage index: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or bend points, in the PIA formula; (4) the bend points in the maximum family benefit formula; (5) the amount of earnings required for a worker to be credited with a quarter of coverage; (6) the old-law contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (7) the SGA amount applicable to statutorily blind individuals; and (8) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase under regulatory requirements—the SGA amount applicable to non-blind disabled persons, and the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $117,000 for remuneration paid in 2014 and self-employment income earned in taxable years beginning in 2014. The OASDI contribution and benefit base serves as the maximum annual amount of earnings on which OASDI taxes are paid. It is also the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2014 is the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2012 to that for 1992; or (2) the current base ($113,700). If the resulting amount is not a multiple of $300, it is rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2012 ($44,321.67 as determined above) to that for 1992 ($22,935.42) produces the amount of $117,106.78. We round this amount to $117,000. Because $117,000 exceeds the current base amount of $113,700, the OASDI contribution and benefit base is $117,000 for 2014.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the NRA has earnings in excess of the applicable retirement earnings test exempt amount. NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's PIA. The NRA is age 66 for those born in 1943–54, and it gradually increases reaching age 67 for those born in 1960 or later. A higher exempt amount applies in the year in which a person attains his or her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Public Law 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries attaining NRA after 2014, the lower monthly exempt amount for 2014 is the larger of: (1) The 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2012 to that for 1992; or (2) the 2013 monthly exempt amount ($1,260). If the resulting amount is not a multiple

of $10, it is rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2014, the higher monthly exempt amount for 2014 is the larger of: (1) The 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2012 to that for 2000; or (2) the 2013 monthly exempt amount ($3,340). If the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1992 ($22,935.42) produces the amount of $1,294.74. We round this to $1,290. Because $1,290 exceeds the corresponding current exempt amount of $1,260, the lower retirement earnings test monthly exempt amount is $1,290 for 2014. The corresponding lower annual exempt amount is $15,480 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2012 ($44,321.67) to that for 2000 ($32,154.82) produces the amount of $3,445.96. We round this to $3,450. Because $3,450 exceeds the corresponding current exempt amount of $3,340, the higher retirement earnings test monthly exempt amount is $3,450 for 2014. The corresponding higher annual exempt amount is $41,400 under the retirement earnings test.

Primary Insurance Amount Benefit Formula

General

The Social Security Amendments of 1977 provided a method for computing benefits that generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's average indexed monthly earnings (AIME) to compute the PIA. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or index, a worker's earnings to reflect the change in the general wage levels that occurred during the worker's years of employment. Such indexing ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the AIME, we first determine the required number of years of earnings. We then select the number of years with the highest indexed earnings, add the indexed earnings for those years, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the AIME.

Computing the PIA

The PIA is the sum of three separate percentages of portions of the AIME. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the AIME the ''bend points'' of the formula. Therefore, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2014, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2012 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1977 ($9,779.44) produces the amounts of $815.78 and $4,917.36. We round these to $816 and $4,917. Accordingly, the portions of the AIME to be used in 2014 are the first $816, the amount between $816 and $4,917, and the amount over $4,917.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2014, or who die in 2014 before becoming eligible for benefits, their PIA will be the sum of:

(a) 90 percent of the first $816 of their AIME, plus

(b) 32 percent of their AIME over $816 and through $4,917, plus

(c) 15 percent of their AIME over $4,917.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act.

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long-established policy of limiting the total monthly benefits that a worker's family may receive based on his or her PIA. Those amendments also continued the then-existing relationship between maximum family benefits and PIAs but changed the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980 or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the PIA. It involves computing the sum of four separate percentages of portions of the worker's PIA. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2014, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2012 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1977 ($9,779.44) produces the amounts of $1,042.39, $1,504.67, and $1,962.41. We round these amounts to $1,042, $1,505, and $1,962. Accordingly, the portions of the PIAs to be used in 2014 are the first $1,042, the amount between $1,042 and $1,505, the amount between $1,505 and $1,962, and the amount over $1,962.

Consequently, for the family of a worker who becomes age 62 or dies in 2014 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed:

(a) 150 percent of the first $1,042 of the worker's PIA, plus

(b) 272 percent of the worker's PIA over $1,042 through $1,505, plus

(c) 134 percent of the worker's PIA over $1,505 through $1,962, plus

(d) 175 percent of the worker's PIA over $1,962.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act.

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2014 is $1,200. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2014 is the larger of (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2012 to that for 1976; or (2) the current amount of $1,160. Section 213(d) provides that if the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1976 ($9,226.48) produces the amount of $1,200.94. We then round this amount to $1,200. Because $1,200 exceeds the current amount of $1,160, the quarter of coverage amount is $1,200 for 2014.

Old-Law Contribution and Benefit Base

General

The old-law contribution and benefit base for 2014 is $87,000. This base would have been effective under the Act without the enactment of the 1977 amendments.

The old-law contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments that correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (section 230(d) of the Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the old-law base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The old-law contribution and benefit base is the larger of: (1) The 1994 old-law base ($45,000) multiplied by the ratio of the national average wage index for 2012 to that for 1992; or (2) the current old-law base ($84,300). If the resulting amount is not a multiple of $300, it is rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 old-law contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1992 ($22,935.42) produces the amount of $86,960.48. We round this amount to $87,000. Because $87,000 exceeds the current amount of $84,300, the old-law contribution and benefit base is $87,000 for 2014.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in SGA. A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2014 is the larger of: (1) Such amount for 1994 multiplied by the ratio of the national average wage index for 2012 to that for 1992; or (2) such amount for 2013. The monthly SGA amount for non-blind disabled individuals for 2014 is the larger of: (1) Such amount for 2000 multiplied by the ratio of the national average wage index for 2012 to that for 1998; or (2) such amount for 2013. In either case, if the resulting amount is not a multiple of $10, it is rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1992 ($22,935.42) produces the amount of $1,797.18. We then round this amount to $1,800. Because $1,800 exceeds the current amount of $1,740, the monthly SGA amount for statutorily blind individuals is $1,800 for 2014.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1998 ($28,861.44) produces the amount of $1,074.97. We then round this amount to $1,070. Because $1,070 exceeds the current amount of $1,040, the monthly SGA amount for non-blind disabled individuals is $1,070 for 2014.

Trial Work Period Earnings Threshold

General

During a trial work period of 9 months in a rolling 60-month period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still receive monthly benefit payments. To be considered a trial work period month, earnings must be over a certain level. In 2014, any month in which earnings exceed $770 is considered a month of services for an individual's trial work period.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2014, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2012 to that for 1999 or, if larger, such amount for 2013. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1999 ($30,469.84) produces the amount of $770.94. We then round this amount to

$770. Because $770 exceeds the current amount of $750, the monthly earnings threshold is $770 for 2014.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2014, this threshold is $1,900. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2014 is equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2012 to that for 1993. If the resulting amount is not a multiple of $100, it is rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1993 ($23,132.67) produces the amount of $1,915.98. We then round this amount to $1,900. Accordingly, the domestic employee coverage threshold amount is $1,900 for 2014.

Election Official and Election Worker Coverage Threshold

General

The minimum amount an election official and election worker must earn so that such earnings are covered under Social Security or Medicare is the election official and election worker coverage threshold. For 2014, this threshold is $1,600. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election official and election worker coverage threshold amount for 2014 is equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2012 to that for 1997. If the amount so determined is not a multiple of $100, it is rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2012 ($44,321.67) to that for 1997 ($27,426.00) produces the amount of $1,616.05. We then round this amount to $1,600. Accordingly, the election worker coverage threshold amount is $1,600 for 2014.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

Dated: October 31, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2013–26569 Filed 11–1–13; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighteenth Meeting: RTCA Special Committee 217—Aeronautical Databases Joint With EUROCAE WG–44—Aeronautical Databases

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of RTCA Special Committee 217—Aeronautical Databases Joint with EUROCAE WG–44—Aeronautical Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217—Aeronautical Databases being held jointly with EUROCAE WG–44—Aeronautical Databases.

DATES: The meeting will be held December 2 through December 6, 2013, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by Boeing, 100 Boeing Way B–82, Titusville, Florida 32780, USA. Pre-registration for this meeting is required to accommodate the Boeing Facility Requirements. Information is to be provided to Brian Gilbert (*brian.d.gilbert@boeing.com*). US citizens need to provide their full names and company names in an email to Brian. Non-US persons need to fill out the Non-US Person Badge form available on RTCA Workspace.

FOR FURTHER INFORMATION CONTACT: Sophie Bousquet, *SBousquet@rtca.org*, 202–330–0663 or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 217—Aeronautical Databases held jointly with EUROCAE WG–44—Aeronautical Databases. The agenda will include the following:

Monday, December 2—Opening Plenary Session

- Co-Chairmen's remarks and introductions
- Approve minutes from 17th meeting
- Review and approve meeting agenda for 18th meeting
- Review of joint WG–1/WG–2 Action Items
- Review of ISRA from SC–217 to SC–216
- Continuation, ''Data Terms Definitions'' Review

Monday Thru Thursday, Dec 2 Through Dec 5—Working Group One (WG1)–DO–200A/ED–76

- Discussion of WG–1 open action items
- Standards related to ED–76/DO–200
- Source data considerations
- Tool qualification aspects (including a presentation of DO–330/ED215 by the corresponding RTCA Committee SC Chairman)
- DAL and DQR considerations
- Clarification of terms (user/end-user, end-use/intended use, etc.)
- Aeronautical data flow (text to support the figure agreed in Dublin)

Monday Thru Thursday, Dec 2 Through Dec 5—Working Group Two (WG2)–DO–272/DO–291

- WG–2 Action Item Status Review
- Terms of Reference for Dec PMC Meeting
- Report on Recent Meetings—European Committee for Standardisation (CEN), Technical Committee (TC) 377 ''Air Traffic Management''—WG 2—Aerodrome Mapping Data
- Helicopter Terrain and Obstacle Data—Progress Report
- Airport Lighting Presentation

Closing Plenary Session (9:00 a.m. to Noon)

- Presentation of WG1 and WG2 conclusions
- Working arrangements for the remaining work
- Review of action items
- Next meetings, dates and locations
- Any other business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on October 30, 2013.

Paige L. Williams,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2013–26488 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventy Sixth Meeting: RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the Seventy Sixth meeting of RTCA Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held December 10–12, 2013 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 147. The agenda will include the following:

December 10

- Opening Plenary Session
  - Chairmen's Opening Remarks
  - Introductions
  - Approval of Minutes from 75th meeting of SC 147
  - Approval of Agenda
- Working Group Reports
- SC–147 Terms of Reference (ToRs)
  - Scope, Deliverables and Schedule
  - Coordination with other SCs
- EUROCAE Working Group (WG)–75 Status
  - Status of Current Activities
- SESAR Activities/Work
  - Status of Current Activities
- AVS Activities/Report
  - TCAS II TSO–C119d/AC 20–151 () updates
- FAA TCAS Program Office
  - Status of Current Activities
  - ACAS X Concept Review
  - ACAS X ConOps Overview
  - System Overview
  - Threat Resolution Module

December 11

- Continuation of FAA TCAS Program Office
  - ACAS X Functional Architecture
  - Verification & Validation Activities Overview
  - System Validation
  - TSIM X
  - Certification Perspective
  - 2013 FAA Flight Test Quick-Look
  - Operational Performance
  - Program Handouts
- Working Group Realignment
  - Proposed Structure
  - WG Formulation/Chairs
  - Roles & Responsibilities
- Committee Process
  - Change Proposal (CP) process
  - Envisioned Products
  - Degrees of Freedom for Manufactures
- MOPS Development Issues
  - Technical Approach
  - Technical Content

December 12

- Working Group Stand-ups
  - Scope/Organization of Work
  - High-level Schedule/Milestones
  - Technical Discussion
  - Planning
  - Initial Actions
  - Scheduling of teleconferences, etc.
  - Working Group Sign-up
- Other Business
- Action Items
- Time and Place of Next Meeting
- Plenary Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on October 29, 2013

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–26486 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions of FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to a proposed highway project, State Route 1011, Section 470, Pond Eddy Bridge (also known locally as the All Veterans Memorial Bridge), in Pike County in the State of Pennsylvania. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before April 4, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Ms. Renee Sigel, Division Administrator, Federal Highway Administration, 228 Walnut Street, Room 508, Harrisburg, Pennsylvania 17101–1720; Office Hours 8 a.m. to 4:30 p.m.; telephone: (717) 221–3461; email: *renee.sigel@fhwa.dot.gov.* For PennDOT: Ms. Debbie Noone, P.E., Pennsylvania Department of Transportation, 55 Keystone Industrial Park, Dunmore, Pennsylvania 18512; Office Hours 8 a.m. to 4 p.m.; telephone: (570) 963–4010.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of Pennsylvania: State Route 1011, Section 470, Pond Eddy Bridge, in Pike County Pennsylvania. The project involves the replacement of the existing

Pond Eddy Bridge carrying State Route 1011 over the Delaware River between Lumberland Township, Sullivan County, NY and Shohola Township, Pike County, PA. The proposed replacement bridge will be located approximately 50 feet upstream of the existing bridge. The project will provide a structurally sound bridge to carry State Route 1011 over the Delaware River and provide adequate access over the River for the community of Pond Eddy, Pennsylvania. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Categorical Exclusion Evaluation (CEE) for the project approved by FHWA on July 2, 2013 and in other documents in the FHWA project records. The CEE and other documents in the FHWA project file are available by contacting the FHWA or PennDOT at the addresses provided above. The CEE can be viewed and downloaded from the following Web site *http://www.dotdom2.state.pa.us/ceea/ceeamain02.nsf* by typing the number 6914 in the search box at the top left corner of the Web page and clicking ''Go''. Then Click on the blue link for the project #6914.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 et seq.];.

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: October 23, 2013.

Renee Sigel,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 2013–26321 Filed 11–4–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2013–0392]

Proposed Enhancements to the Motor Carrier Safety Measurement System (SMS) Public Web Site

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA provides notice and seeks comments on proposed enhancements to the display of information on the Agency's Safety Measurement System (SMS) public Web site. FMCSA first announced the implementation of the SMS in April 2010 and announced further improvements to the SMS in March 2012 and August 2012. Consistent with its prior announcements, the Agency proposes changes to the design of the SMS public Web site that are the direct result of feedback from stakeholders regarding the information displayed. However, the Agency is not proposing changes to the SMS methodology at this time.

On November 4, 2013, FMCSA began a preview of the proposed Web site enhancements at *https://csa.fmcsa.dot.gov/SMSPreview/.* Motor carriers are able to log in with their Portal account to view their own data in the redesigned format. The general public will be also able to access simulated motor carrier data to view the improved Web site design. During the preview period, FMCSA will hold several webinars to provide detailed information about the proposed SMS display changes.

DATES: Comments must be received on or before January 6, 2014. Educational webinars:

1. Monday, November 18, 2013, 12:00 to 1:30 p.m. eastern time.

2. Thursday, November 21, 2013, 1:30 to 3:00 p.m. eastern time.

3. Friday, November 22, 2013, 11:30 a.m. to 1:00 p.m. eastern time.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2013–0392 by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., e.t, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the

search box insert the docket number ''FMCSA–2013–0392'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change the proposed enhancements based on your comments. FMCSA may issue final enhancements at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0392'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 [73 FR 3316].

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Stevenson, Federal Motor Carrier Safety Administration, Compliance Division, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone 202–366–5241, E-Mail: *courtney.stevenson@dot.gov*.

SUPPLEMENTARY INFORMATION:

The SMS

On April 9, 2010, FMCSA announced the implementation of the SMS in the **Federal Register** (75 FR 18256) (Docket No. FMCSA–2004–18898). The Agency announced it would use the SMS to identify high-risk motor carriers for on-site investigations consistent with Section 4138 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1745 (Aug. 10, 2005) (set out as a note to 49 U.S.C. 31144). The SMS has been operational since December 2010. The SMS is also used to identify and prioritize motor carriers for other interventions, including automated warning letters, and serves as a principal factor in roadside inspection selection software designed to recommend motor carriers with known performance and compliance problems for inspections. Effectiveness testing of the SMS has shown that motor carriers that are categorized as high-risk by the SMS have future crash rates more than double that of all active motor carriers.

Just as the Motor Carrier Safety Status Measurement System (SafeStat) previously provided the public with access to SafeStat data online, the SMS provides the motor carrier industry and other safety stakeholders with more comprehensive, informative and regularly updated safety performance data. As FMCSA explained in its April 9, 2010 **Federal Register** notice, the SMS provides motor carriers and other safety stakeholders with regularly updated safety performance assessments through the public Web site at *http://ai.fmcsa.dot.gov/SMS.*

From the start of CSA, FMCSA expected to modify SMS as new data and additional analyses became available. As stated in its March 27, 2012 **Federal Register** notice (77 FR 18298) (Docket No. FMCSA–2012–0074), FMCSA plans to apply a systematic approach to making improvements to SMS, prioritizing and releasing packages of improvements as needed. Last year, FMCSA made 11 improvements to SMS to better identify high-risk and non-compliant motor carriers for interventions. Those SMS enhancements were implemented in December 2012 and included a new Hazardous Materials (HM) Compliance Behavior Analysis and Safety Improvement Category (BASIC). A complete description of those enhancements, including the rationale behind them, was published in the **Federal Register** on August 28, 2012 (77 FR 52110) (Docket No. FMCSA–2004–18898). The enhancements are also outlined in the *SMS Changes Foundational Document* on the Agency's Web site at *http://csa.fmcsa.dot.gov/Documents/SMS_FoundationalDoc_Final.pdf.* The current proposed enhancements to the display of information on the SMS are an extension of the Agency's effort to provide more comprehensive, informative, and regularly updated safety and compliance performance data through a systematic approach, as announced in the April 9, 2010 and March 27, 2012 **Federal Register** notices.

The August 28, 2012, **Federal Register** notice announced that the Agency would study and refine the HM Compliance BASIC before making it a publicly available BASIC in December 2013. The Agency continues to examine the HM Compliance BASIC but does not plan to make it publicly available with these proposed enhancements to the SMS public Web site. The current effort is focused primarily on the display of the data that is currently available in the SMS.

Enhancing the Public Display of SMS Information

In Fiscal Year 2012, the SMS public Web site hosted nearly 48 million user sessions, up from over 30 million user sessions in Fiscal Year 2011 and 4 million user sessions under the prior public SafeStat system in 2010. Many more users now access the SMS; this presents FMCSA with opportunities to ensure that the users understand the information provided.

FMCSA received feedback on SMS's public display from a variety of stakeholders including the Agency's Motor Carrier Safety Advisory Committee (MCSAC). The MCSAC was asked to appoint a subcommittee to help identify ways in which FMCSA could leverage the SMS Web site to best promote safety; suggestions as to how FMCSA could more clearly convey the intent of the SMS as FMCSA's workload prioritization tool; aspects that work

well with respect to the current SMS Web site's design and operation; and what changes would make the information on the SMS more easily understood and accessible to a variety of safety stakeholders.

List of Proposed Enhancements to the SMS Display

The proposed Web site enhancements seek to accomplish three key objectives:

1. Provide easier, more intuitive navigation and user-friendly features and descriptions to clarify the SMS's role as FMCSA's prioritization tool for interventions;

2. Consolidate FMCSA safety information so users do not have to go to multiple sites; and

3. Provide improved access to detailed information and new performance monitoring tools.

The proposed Web site enhancements are summarized below:

• Displaying a summary BASIC status to better clarify if a motor carrier's performance in the individual BASICs causes it to be prioritized for an intervention. Detailed data such as the motor carrier's percentile ranking in each BASIC has been moved to the individual drill down pages for each BASIC.

• A new ''Take a Tour'' feature to highlight enhancements to the SMS display and show visitors how to locate and use the site.

• Allowing the Web site user to download the data for all of the carriers in the same safety event group used to rank a carrier's BASIC percentile. The SMS determines a BASIC percentile for each motor carrier within a BASIC based on how the individual carrier's BASIC measure ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes).

• Highlighting a motor carrier's individual performance measure in each BASIC to more clearly identify its performance trends over time. The measure is based on the results of the carrier's roadside inspections or crashes, and is not relative to other carriers in its safety event group.

• Reordering the display of the BASICs based on their association to crash rates, with the BASICs with the strongest associations at the left.

• Displaying any motor carrier safety rating from a compliance review issued in accordance with 49 CFR part 385. Previously, users had to go to FMCSA's Safety and Fitness Electronic Records System (SAFER) Web site.

• Displaying current insurance and authority status. Previously, users had to access FMCSA's Licensing and Insurance Online Web site.

• Providing a motor carrier's enforcement case history, including the date the case was closed, the applicable violations, and the associated fines.

• Enhancing the display of safety performance over time through a variety of displays and graphs users can customize.

• Displaying the total number of inspections as well as a breakdown of the number of inspections with violations used in the SMS in each carrier's detail.

• Clarifying terminology in the SMS, such as the definitions of the terms ''0%'' and ''<3 inspections with violations,'' in a new glossary called ''SMS Display Key Terms.''

On November 4, 2013, FMCSA began a preview of the proposed Web site enhancements at *https://csa.fmcsa.dot.gov/SMSPreview/*. Motor carriers are able to log in with their Portal account or PINs to view their own data in the proposed re-designed format. The general public will be able to access simulated carrier data in order to view the proposed enhancements. During the preview period, FMCSA will hold several public webinars to provide stakeholders with detailed information about the SMS display.

The Agency is not proposing changes to the SMS methodology at this time.

Public Webinars

FMCSA plans to host several educational webinars for the public addressing the proposed enhancements to the SMS public Web site. These webinars will take place in November 2013. The scheduled dates and times are below.

1. Monday, November 18, 2013, 12:00 to 1:30 p.m. eastern time.

2. Thursday, November 21, 2013, 1:30 to 3:00 p.m. eastern time.

3. Friday, November 22, 2013, 11:30 a.m. to 1:00 p.m. eastern time.

All the webinars will have closed captioning available, and all stakeholders are encouraged to participate. Interested parties can register for the webinars through the FMCSA's National Training Center at *https://www.fmcsa.dot.gov/ntc/webinarinfo/CSA_Improvements_Webinar-FMCSA.pdf.*

Request for Comments

FMCSA requests comments on the above improvements to the SMS public Web site. Commenters are requested to provide supporting data wherever appropriate.

Issued On: October 31, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–26543 Filed 11–1–13; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Faris R. Fink, Commissioner (Small Business/Self Employed), IRS
2. Heather Maloy, Commissioner (Large Business and International), IRS
3. Priyia Aiyar, Deputy General Counsel

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 29, 2013.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2013–26391 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Christopher Sterner, Deputy Chief Counsel (Operations)
2. Laurel Robinson, Deputy Division Counsel (Large Business & International)
3. Debra Moe, Deputy Division Counsel (Small Business/Self Employed)
4. Curtis G. Wilson, Associate Chief Counsel (Passthroughs and Special Industries)
5. Andrew Keyso, Associate Chief Counsel (Income Tax & Accounting)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: Ocrober 23, 2013.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2013–26390 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 9057, TD 9154, TD 9187]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–135898–04 (TD 9154), Extension of Time to Elect Method for Determining Allowable Loss; REG–152524–02 (TD 9057), Guidance Under Section 1502, Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years; REG–123305–02, REG–102740–02 (TD 9187), Loss Limitation Rules.

DATES: Written comments should be received on or before January 6, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: REG–135898–04 (TD 9154), Extension of Time to Elect Method for Determining Allowable Loss; REG–152524–02 (TD 9057), Guidance Under Section 1502, Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years; REG–123305–02, REG–102740–02 (TD 9187), Loss Limitation Rules.

OMB Number: 1545–1774.

Regulation Project Number: TD 9057, TD 9154, and TD 9187.

Abstract: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect or under § 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the § 1.1502–20(g) election; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset. With respect to § 1.1502–20T, the information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. Furthermore, regarding § 1.1502–32(b)(4), the information also is necessary to allow the taxpayer that acquired a subsidiary of a consolidated group to amend its election under § 1.1502–32(b)(4), so that the acquiring group can use the acquired subsidiary's losses to offset its income. The information also is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss pursuant to a new due date, and to amend or revoke certain prior elections to determine the amount of allowable loss.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 18,360.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Hours: 36,720.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–26386 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–44–94]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–44–94 (TD 8690), Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions (§§ 1.170A–13(f) and 1.6115–1).

DATES: Written comments should be received on or before January 6, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be

directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94.

Abstract: This regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The regulations affect donee organizations described in Internal Revenue code section 170(c) and individuals and entities that make payments to these organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 1,975,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–26385 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–33–92]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–33–92 (TD 8507), Information Reporting for Reimbursements of Interest on Qualified Mortgages (§ 1.6050H–2).

DATES: Written comments should be received on or before January 6, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

OMB Number: 1545–1339.

Regulation Project Number: IA–33–92.

Abstract: Section 6050H of the Internal Revenue Code relates to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information is used to determine whether mortgage interest reimbursements have been correctly reported on the tax return of the taxpayer who receives the reimbursement.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden of Form 1098, Mortgage Interest Statement.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–26384 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS)

Proposed Collection; Comment Request for Revenue Procedure 2007–69

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2007–69, Section 45H Certification.

DATES: Written comments should be received on or before *January 6, 2014* to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Section 45H Certification.

OMB Number: 1545–2074.

Revenue Procedure Number: Revenue Procedure 2007–69.

Abstract: The revenue procedure informs small business refiners how to obtain the certification required under 45H(f) of the Internal Revenue Code.

Current Actions: There are no changes being made to this revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Average Time per Respondent: 1 hour; 3 mins.

Estimated Total Annual Burden Hours: 75.

The following paragraph applies to all the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 29, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–26387 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Internal Revenue Service Advisory Council (IRSAC), has been renewed for a two-year period beginning October 29, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, National Public Liaison, at *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the renewal of the Internal Revenue Service Advisory Council (IRSAC). The primary purpose of the advisory council is to provide an organized public forum for Internal Revenue Service officials and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or makes recommendations with respect to emerging federal tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggest improvements with respect to issues having substantive effect on federal tax administration. Conveying the public's perception of IRS activities to Internal Revenue Service officials, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the applicant's knowledge of Circular 230.

Dated: October 29, 2013.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2013–26388 Filed 11–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Information Reporting Program Advisory Committee (IRPAC), has been renewed for a two-year period beginning October 29, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, at *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the renewal of the Information Reporting Program Advisory Committee (IRPAC). The purpose of the IRPAC is to provide an organized public forum for discussion of relevant information reporting issues of mutual concern as between Internal Revenue Service (''IRS'') officials and

representatives of the public. Advisory committee members convey the public's perception of IRS activities, advise with respect to specific information reporting administration issues, provide constructive observations regarding current or proposed IRS policies, programs, and procedures, and propose improvements to information reporting operations and the Information Reporting Program. Membership is balanced to include stakeholder segmentation, geographic location, industry representation and influence in channel communication and preferences, technology adaptation, life cycle data reporting, economics and specific product/service usage.

Dated: October 29, 2013.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2013–26389 Filed 11–4–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Tuesday,

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Part II

Securities and Exchange Commission

17 CFR Parts 200, 227, 232 et al.
Crowdfunding; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 227, 232, 239, 240 and 249

[Release Nos. 33–9470; 34–70741; File No. S7–09–13]

RIN 3235–AL37

Crowdfunding

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission is proposing for comment new Regulation Crowdfunding under the Securities Act of 1933 and the Securities Exchange Act of 1934 to implement the requirements of Title III of the Jumpstart Our Business Startups Act. Regulation Crowdfunding would prescribe rules governing the offer and sale of securities under new Section 4(a)(6) of the Securities Act of 1933. The proposal also would provide a framework for the regulation of registered funding portals and brokers that issuers are required to use as intermediaries in the offer and sale of securities in reliance on Section 4(a)(6). In addition, the proposal would exempt securities sold pursuant to Section 4(a)(6) from the registration requirements of Section 12(g) of the Securities Exchange Act of 1934.

DATES: Comments should be received on or before February 3, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–09–13 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–13. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you would like to make publicly available.

FOR FURTHER INFORMATION CONTACT: With regard to requirements for issuers, Sebastian Gomez Abero or Jessica Dickerson, Division of Corporation Finance, at (202) 551–3500, and with regard to requirements for intermediaries, Joseph Furey, Joanne Rutkowski, Leila Bham, Timothy White or Carla Carriveau, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Background

A. Overview of Crowdfunding

Crowdfunding is a new and evolving method to raise money using the Internet. Crowdfunding serves as an alternative source of capital to support a wide range of ideas and ventures. An entity or individual raising funds through crowdfunding typically seeks small individual contributions from a large number of people.[1] A

[1] *See, e.g.,* C. Steven Bradford, *Crowdfunding and the Federal Securities Laws,* 2012 Colum. Bus. L. Rev. 1, 10 (2012) (''Bradford''). Crowdfunding has some similarities to ''crowdsourcing,'' which is the concept that ''the power of the many can be leveraged to accomplish feats that were once the

crowdfunding campaign generally has a specified target amount for funds to be raised, or goal, and an identified use of those funds. Individuals interested in the crowdfunding campaign—members of the ''crowd''—may share information about the project, cause, idea or business with each other and use the information to decide whether or not to fund the campaign based on the collective ''wisdom of the crowd.'' [2] Crowdfunding has been used to fund, for example, artistic endeavors, such as films and music recordings, where contributions or donations are rewarded with a token of value related to the project (*e.g.,* a person contributing to a film's production budget is rewarded with tickets to view the film and is identified in the film's credits) or where contributions reflect the pre-purchase of a finished product (*e.g.,* a music album). A number of entities operate Web sites that facilitate crowdfunding in its current form,[3] with some Web sites specializing in certain industries, such as computer-based gaming, music and the arts, and other Web sites focusing on particular types of entrepreneurs.[4]

The Jumpstart Our Business Startups Act (the ''JOBS Act''),[5] enacted on April 5, 2012, establishes the foundation for a regulatory structure for startups and small businesses to raise capital through securities offerings using the Internet through crowdfunding.[6] The crowdfunding provisions of the JOBS Act were designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly.[7] They also permit Internet-based platforms to facilitate the offer and sale of securities without having to register with the Commission as brokers.

In the United States, crowdfunding in its current form generally has not involved the offer of a share in any financial returns or profits that the fundraiser may expect to generate from business activities financed through crowdfunding.[8] Such a profit or revenue-sharing model—sometimes referred to as the ''equity model'' of crowdfunding [9]—could trigger the application of the federal securities laws because it likely would involve the offer and sale of a security.[10] Under the Securities Act of 1933 (''Securities Act''), the offer and sale of securities is required to be registered unless an exemption is available. At least one commenter has stated that registered offerings are not feasible for raising smaller amounts of capital, as is done in a typical crowdfunding transaction, because of the costs of conducting a registered offering and the resulting ongoing reporting obligations under the Securities Exchange Act of 1934 (''Exchange Act'') that may arise as a result of the offering.[11] Limitations under existing regulations, including restrictions on general solicitation and general advertising and purchaser qualification requirements, have made private placement exemptions generally unavailable for crowdfunding transactions, which are intended to be made to a large number of potential investors and not limited to investors that meet specific qualifications.[12]

Moreover, a third party that operates a Web site to effect the purchase and sale of securities for the account of others generally would, under existing regulations, be required to register with the Commission as a broker-dealer and comply with the laws and regulations applicable to broker-dealers.[13] A person that operates such a Web site only for the purchase of securities of startups and small businesses, however, may find it impractical in view of the limited nature of that person's activities and business to register as a broker-dealer and operate under the full set of regulatory obligations that apply to broker-dealers.

B. Title III of the JOBS Act

Title III of the JOBS Act (''Title III'') added new Securities Act Section

province of the specialized few.'' *See* Jeff Howe, *The Rise of Crowdsourcing,* Wired (Jun. 2006) (''Howe''). Crowdsourcing is an approach for problem solving that employs the ''wisdom of crowds,'' where ''the very success of a solution is dependent on its emergence from a large body of solvers.'' Daren C. Brabham, *Crowdsourcing as a Model for Problem Solving,* 14 Convergence 75, 79–80 (2008) (''Brabham'').

[2] *See* Stephenson Letter; Richard Waters, *Startups seek the 'wisdom of crowds,'* Financial Times, Apr. 3, 2012, *available at http://www.ft.com/intl/cms/s/0/c1f1695c-7da8-11e1-9adc-00144feab49a.html#axzz2b7QxIH5L* (''[T]he backers of [crowdfunding] argue that the hard work of making investment decisions—filtering out the best investments and limiting fraud—can be solved by tapping the 'wisdom of crowds' over the internet.'').

[3] Examples of current crowdfunding Web sites include: *www.indiegogo.com*, *www.kickstarter.com*, *www.kiva.com* and *www.rockethub.com*.

[4] *See* Bradford, note 1 at 12–13 (citing ''Unbound: Books Are Now in Your Hands'' (*http://unbound.co.uk/*), specializing in book publishing, ''My Major Company'' (*http://www.mymajorcompany.com/*), specializing in music, ''Spot.us: Community-funded Reporting'' (*http://spot.us/*), specializing in journalism, and ''Heifer International'' (*http://www.heifer.org/*) specializing in agriculture and ranching). *See also* Liz Gannes, *Crowdfunding for a Cause: Nonprofits Can Now Hold Fundraisers on Crowdtilt,* AllThingsD (Nov. 21, 2012), *available at http://allthingsd.com/20121121/crowdfunding-for-a-cause-non-profits-can-now-hold-fundraisers-on-crowdtilt/* (describing the use of crowdfunding for charitable purposes).

[5] Public Law 112–106, 126 Stat. 306 (2012).

[6] To facilitate public input on JOBS Act initiatives, the Commission solicited comment on each title of the JOBS Act through its Web site at *http://www.sec.gov/spotlight/jobsactcomments.shtml*. The public comments we received on Title III are available on our Web site at *http://www.sec.gov/comments/jobs-title-iii/jobs-title-iii.shtml*. Exhibit A of the release includes a citation key to the comment letters the Commission received on Title III.

[7] *See, e.g.,* 158 Cong. Rec. S1781 (daily ed. Mar. 19, 2012) (statement of Sen. Carl Levin) (''Right now, the rules generally prohibit a company from raising very small amounts from ordinary investors without significant costs.''); 157 Cong. Rec. S8458–02 (daily ed. Dec. 8, 2011) (statement of Sen. Jeff Merkley) (''Low-dollar investments from ordinary Americans may help fill the void, providing a new avenue of funding to the small businesses that are the engine of job creation. The CROWDFUND Act would provide startup companies and other small businesses with a new way to raise capital from ordinary investors in a more transparent and regulated marketplace.''); 157 Cong. Rec. H7295–01 (daily ed. Nov. 3, 2011) (statement of Rep. Patrick McHenry) (''[H]igh net worth individuals can invest in businesses before the average family can. And that small business is limited on the amount of equity stakes they can provide investors and limited in the number of investors they can get. So, clearly, something has to be done to open these capital markets to the average investor[.]'').

[8] *See* Bradford, note 1; Jenna Wortham, *Start-Ups Look to the Crowd,* N.Y. Times at B1 (Apr. 30, 2012); Joan MacLeod Heminway and Shelden Ryan Hoffman, *Proceed At Your Peril: Crowdfunding and the Securities Act of 1933,* 78 Tenn. L. Rev. 879 (2011); Thomas Lee Hazen, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws—Why the Specially Tailored Exemption Must be Conditioned on Meaningful Disclosure,* 90 N.C.L. Rev. 1735 (2012) (''Hazen''); C. Steven Bradford, *The New Federal Crowdfunding Exemption: Promise Unfulfilled,* 40 Sec. Reg. L.J. 1 (2012).

[9] *See* Bradford, note 1 at 33.

[10] *See* Securities Act Section 2(a)(1) and Exchange Act Section 3(a)(10) (setting forth the definition of a ''security'' under the Securities Act and the Exchange Act, respectively). *See, e.g., Reves* v. *Ernst & Young,* 494 U.S. 56 (1990) (outlining the requirements for a note to be considered a security); *SEC* v. *W.J. Howey Co.,* 328 U.S. 293 (1946) (setting forth the definition of an investment contract).

[11] *See* Bradford, note 1 at 42.

[12] *But see Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings,* Release No. 33–9415 (July 10, 2013) [78 FR 44771 (July 24, 2013)] (''*General Solicitation Adopting Release*'') (adopting rules to implement Title II of the JOBS Act). Title II of the JOBS Act directed the Commission to amend Rule 506 of Regulation D to permit general solicitation or general advertising in offerings made under Rule 506, provided that all purchasers of the securities are accredited investors. Accredited investors include natural persons who meet certain income or net worth thresholds. Although this rule facilitates the type of broad solicitation emblematic of crowdfunding, crowdfunding is premised on permitting sales of securities to any interested person, not just to investors who meet specific qualifications, such as accredited investors.

[13] Exchange Act Section 15(a)(1) generally makes it unlawful for a broker or dealer to effect any transactions in, or induce the purchase or sale of, any security unless that broker or dealer is registered with the Commission pursuant to Exchange Act Section 15(b). 15 U.S.C. 78*o*(a). *See* discussion in Section II.D.2 below. Because brokers and dealers both register as broker-dealers (*i.e.,* there is no separate ''broker'' or ''dealer'' registration under Exchange Act Section 15(b)), we also use the term ''broker-dealer'' in this release.

4(a)(6),[14] which provides an exemption from the registration requirements of Securities Act Section 5 for certain crowdfunding transactions. To qualify for the exemption under Section 4(a)(6), crowdfunding transactions by an issuer (including all entities controlled by or under common control with the issuer) must meet specified requirements, including the following:

- The amount raised must not exceed $1 million in a 12-month period (this amount is to be adjusted for inflation at least every five years);
- individual investments in a 12-month period are limited to:
  - the greater of $2,000 or 5 percent of annual income or net worth, if annual income or net worth of the investor is less than $100,000; and
  - 10 percent of annual income or net worth (not to exceed an amount sold of $100,000), if annual income or net worth of the investor is $100,000 or more (these amounts are to be adjusted for inflation at least every five years); and
- transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a ''funding portal.''

In addition, Title III:

- adds Securities Act Section 4A, which requires, among other things, that issuers and intermediaries that facilitate transactions between issuers and investors in reliance on Section 4(a)(6) provide certain information to investors and potential investors, take certain other actions and provide notices and other information to the Commission;
- adds Exchange Act Section 3(h), which requires the Commission to adopt rules to exempt, either conditionally or unconditionally, ''funding portals'' from having to register as brokers or dealers pursuant to Exchange Act Section 15(a)(1);
- includes disqualification provisions under which an issuer would not be able to avail itself of the Section 4(a)(6) exemption if the issuer or other related parties, including an intermediary, was subject to a disqualifying event; and
- adds Exchange Act Section 12(g)(6), which requires the Commission to adopt rules to exempt from the registration requirements of Section 12(g), either conditionally or unconditionally, securities acquired pursuant to an offering made in reliance on Section 4(a)(6).

In this release, we are proposing new rules and forms to implement Securities Act Sections 4(a)(6) and 4A and Exchange Act Sections 3(h) and 12(g)(6). The proposed rules are described in detail below. Until we adopt rules relating to crowdfunding transactions and such rules become effective, issuers and intermediaries may not rely on the exemption provided under Section 4(a)(6).

C. Approach to Proposed Rules

We understand that Title III was designed to help alleviate the funding gap and accompanying regulatory concerns faced by startups and small businesses in connection with raising capital in relatively low dollar amounts.[15] The proposed rules are intended to align crowdfunding transactions under Section 4(a)(6) with the central tenets of the original concept of crowdfunding, in which the public—or the crowd—is presented with an opportunity to invest in an idea or business and individuals decide whether or not to invest after sharing information about the idea or business with, and learning from, other members of the crowd.[16] In this role, members of the crowd are not only sharing information about the idea or business, but also are expected to help evaluate the idea or business before deciding whether or not to invest.[17]

At the same time, Congress provided important investor protections for crowdfunding transactions under Section 4(a)(6), including individual investment limits, required disclosures by issuers and the use of intermediaries. The proposed rules would require that all crowdfunding transactions under Section 4(a)(6) be conducted through a registered intermediary on an Internet Web site or other similar electronic medium to help ensure that the offering is accessible to the public and that members of the crowd can share information and opinions. Registered intermediaries are necessary to bring the issuer and potential investors together and to provide safeguards to potential investors.[18] The proposed rules also would require that intermediaries provide communication channels to facilitate the sharing of information that will allow the crowd to decide whether or not to fund the idea or business.[19] The proposed rules further provide intermediaries a means by which to facilitate the offer and sale of securities without registering as brokers. We are mindful of the timing and presentation of information required to be disclosed to investors pursuant to the terms of the statute. The proposed rules would require that this information be provided to investors at various points in time in connection with an offering and through various electronic means, such as through filings with the Commission and disclosures provided on the intermediary's platform. We believe this approach would be most practical and useful to investors in the crowdfunding context.

We understand that these proposed rules, if adopted, could significantly affect the viability of crowdfunding as a capital-raising method for startups and small businesses. Rules that are unduly burdensome could discourage participation in crowdfunding. Rules that are too permissive, however, may increase the risks for individual investors, thereby undermining the facilitation of capital raising for startups and small businesses.[20] We have directed the Commission staff, accordingly, to develop a comprehensive work plan to review and monitor the use of the crowdfunding

[14] Title III amended Securities Act Section 4 to add Section 4(6); however, Title II of the JOBS Act also amended Securities Act Section 4 and inserted subsections (a) and (b). The U.S. Code implemented the amendment by adding paragraph (6) at the end of subsection (a).

[15] *See* note 7.

[16] *See* notes 1 and 2. As discussed in Section II.C.5.c below, the proposed rules would require a person to open an account with an intermediary before posting comments on the intermediary's platform. However, as discussed in Section II.C.5.a below, a person would not need to open an account with the intermediary in order to view the issuer's disclosure materials.

[17] *See* Hazen, note 8.

[18] *See* 158 Cong. Rec. S1829 (daily ed. Mar. 20, 2012) (statement of Sen. Jeff Merkley) (''The Web sites are subject to oversight by the SEC and security regulators of their principal States . . . This is a key predatory protection to prevent pump-and-dump schemes.'').

[19] *See* Mollick Letter (stating that allowing ongoing discussions between potential investors, community members and issuers is a vital aspect of avoiding fraud and improving proposed projects).

[20] One press article, for example, described non-securities-based crowdfunding campaigns that successfully raised funds but have had problems manufacturing and delivering the ''perks'' or products that were promised in exchange for contributions. *See* Matt Krantz, *Crowd-funding dark side: Sometimes investments go down drain,* USA Today at B1 (Aug. 15, 2012). Investor confidence in crowdfunding could be eroded if such delays occur with regularity in securities-based crowdfunding and compounded by any prevalence of fraud. *See, e.g., Laws Provide Con Artists with Personal Economic Growth Plan,* North American Securities Administrators Association (Aug. 21, 2012) (identifying crowdfunding and Internet-based offers of securities as a threat to investors), *available at http://www.nasaa.org/14679/laws-provide-con-artists-with-personal-economic-growth-plan/. See also* Adrianne Jeffries, *This is What a Kickstarter Scam Looks Like,* BetaBeat (Apr. 30, 2012), *available at http://betabeat.com/2012/04/this-is-what-a-kickstarter-scam-looks-like/. But see* Olga Khazan, *Kickstarter spies a sunglass start-up,* Washington Post at A14 (May 28, 2012) (discussing a successful sunglasses company that used crowdfunding for startup funds); *Crowdfunding: Invested Central raises $120,000,* Washington Post at A10 (Jul. 23, 2012) (mentioning a company that was able to raise capital through crowdfunding when it could not otherwise secure traditional financing for an expansion of its business).

exemption under Section 4(a)(6) and the rules the Commission adopts to implement crowdfunding. Upon adoption of final rules, the Commission staff will monitor the market for offerings made in reliance on Section 4(a)(6), focusing in particular on the types of issuers using the exemption, the level of compliance with Regulation Crowdfunding by issuers and intermediaries and whether the exemption is promoting new capital formation while at the same time providing key protections for investors. These efforts will assist the Commission in evaluating the development of market practices in offerings made in reliance on Section 4(a)(6). These efforts also will facilitate future Commission consideration of any potential amendments to the rules implementing crowdfunding that would be consistent with the Commission's mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation. We urge commenters, as they review the proposed rules, to consider and address the role that our oversight, enforcement and regulation should play once a crowdfunding market under Section 4(a)(6) begins to develop.

II. Discussion of Proposed Regulation Crowdfunding

A. Crowdfunding Exemption

New Securities Act Section 4(a)(6) provides an exemption from the registration requirements of Securities Act Section 5 for certain crowdfunding transactions. To qualify for the exemption under Section 4(a)(6), crowdfunding transactions by an issuer must meet specified requirements, including requirements with regard to the dollar amount of the securities that may be sold by an issuer and the dollar amount that may be invested by an individual in a 12-month period. The crowdfunding transaction also must be conducted through a registered intermediary that complies with specified requirements.[21] Title III also provides limitations on who may rely on the exemption and establishes a liability scheme for improper use of the exemption. As discussed below, the rules we are proposing are designed to aid issuers and investors in determining the applicable limitations on capital raised and individual investments.

[21] *See* Section II.C below for a discussion of the requirements on intermediaries. *See also* Section II.D below for a discussion of the additional requirements on funding portals.

1. Limitation on Capital Raised

The exemption from registration provided by Section 4(a)(6) is available to a U.S. issuer provided that ''the aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under [Section 4(a)(6)] during the 12-month period preceding the date of such transaction, is not more than $1,000,000.'' [22] Under Section 4A(h), the Commission is required to adjust the dollar amounts in Section 4(a)(6) ''not less frequently than once every five years, by notice published in the **Federal Register**, to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.''

Several commenters indicated that the $1 million maximum aggregate amount is too low.[23] Several commenters requested that the Commission state that the $1 million aggregate limit pertains only to offerings under Section 4(a)(6) and does not include all exempt offerings.[24] Two commenters suggested, however, that the calculation of the $1 million aggregate limit should include all issuer transactions that were exempt under Securities Act Section 4(a) during the preceding 12-month period.[25] Another commenter requested clarification that the limitations and requirements of the offering exemption under Section 4(a)(6) would not affect other methods of raising capital that do not involve the sale of securities, such as contributions from friends and family, donation crowdfunding, gifts, grants or loans.[26] Several commenters had concerns about the possible integration [27] of an offering under Section 4(a)(6) with other exempt offerings and suggested that the Commission should allow for simultaneous or sequential offerings under Regulation D [28] and Section 4(a)(6) without integration.[29]

Section 4(a)(6) specifically provides for a maximum aggregate amount of $1 million sold in reliance on the exemption in any 12-month period. The only reference in the statute to changing that amount is the requirement that the Commission update the amount not less frequently than every five years based on the Consumer Price Index. Additionally, statements in the Congressional Record indicate that Congress believed that $1 million was a substantial amount for a small business.[30] We do not believe that Congress intended for us to modify the maximum aggregate amount permitted to be sold under the exemption when promulgating rules to implement the statute.[31] Therefore, we are not proposing to increase the limitation on the aggregate amount sold.

Title III provides that the $1 million limitation applies to the ''aggregate amount sold to all investors by the issuer, including any amount sold in reliance on the exemption provided under [Section 4(a)(6)].'' Section 4A(g), however, provides that ''[n]othing in the exemption shall be construed as preventing an issuer from raising capital through means other than [S]ection 4[(a)](6).'' These two provisions create statutory ambiguity because the first provision could be read to provide for the aggregation of amounts raised in all exempt transactions, even those that do not involve crowdfunding, while the second provision could be read to provide that nothing in the Section

[22] Securities Act Section 4(a)(6)(A).

[23] *See* High Tide Letter; TechnologyCrowdfund Letter 3 (stating that a minimum of $5 million to $10 million is necessary to start any business other than a software business); EnVironmental Letter (stating that the upper limit should be increased to $5 million or higher); VTNGLOBAL Letter (stating that Rule 506 of Regulation D permits an unlimited capital raise from accredited investors and that the same should apply to crowdfunding).

[24] *See* NSBA Letter (stating that the $1 million limitation should pertain only to offerings made in reliance on Section 4(a)(6)); ABA Letter 1; NCA Letter.

[25] *See* CommunityLeader Letter; Ohio Division of Securities Letter.

[26] *See* Crowdfunding Offerings Ltd. Letter 6.

[27] The integration doctrine seeks to prevent an issuer from improperly avoiding registration by artificially dividing a single offering into multiple offerings such that Securities Act exemptions would apply to multiple offerings that would not be available for the combined offering.

[28] 17 CFR 230.501 through 230.508.

[29] *See* ABA Letter 1; Lingam Letter 2 (stating that offerings under Regulation D and Section 4(a)(6) should not be integrated if: (1) No general solicitation takes place; (2) the Section 4(a)(6) offering closes prior to any general solicitation related to a Regulation D offering; or (3) the Regulation D and the Section 4(a)(6) offerings occur simultaneously and the offerings have the same economic terms, but the size of the Regulation D offering is greater than the size of the Section 4(a)(6) offering); CFIRA Letter 8 (stating that CFIRA's members have opposing views on whether the integration doctrine should be applied to crowdfunded offerings); Liles Letter 1; CFIRA Letter 2; CommunityLeader Letter. *See also* Final Report of the 2012 SEC Government-Business Forum on Small Business Capital Formation (April 2013) (''2012 SEC Government-Business Forum''), *available at http://www.sec.gov/info/smallbus/sbforumreps.htm* (recommending that we consider permitting concurrent offerings to be made to accredited investors in excess of the $1 million limit).

[30] 158 Cong. Rec. S1829 (daily ed. Mar. 20, 2012) (statement of Sen. Jeff Merkley) (''[T]he amendment allows existing small businesses and startup companies to raise up to $1 million per year. That is a substantial amount for a small business.'').

[31] *Cf.* Securities Act Section 4A(b)(1)(D)(iii) (giving the Commission discretion to increase the aggregate target offering amount that requires audited financial statements).

4(a)(6) exemption should limit an issuer's capital raising through other methods. We believe that the overall intent of providing the exemption under Section 4(a)(6) was to provide an additional mechanism for capital raising for startup and small businesses and not to affect the amount an issuer could raise outside of that exemption. Thus, we believe the capital raised in reliance on the exemption provided by Section 4(a)(6) should be counted toward the limitation. Capital raised through other means should not be counted in determining the aggregate amount sold in reliance on Section 4(a)(6). The opposite approach—requiring aggregation of amounts raised in any exempt transaction—would be inconsistent with the goal of alleviating the funding gap faced by startups and small businesses because it would place a cap on the amount of capital startups and small business could raise. An issuer that already sold $1 million in reliance on the exemption provided under Section 4(a)(6), for example, would be prevented from raising capital through other exempt methods and, conversely, an issuer that sold $1 million through other exempt methods would be prevented from raising capital under Section 4(a)(6).

In determining the amount that may be available to be offered and sold in reliance on Section 4(a)(6) in light of the $1 million aggregate amount limitation, an issuer would include amounts sold by the issuer (including amounts sold by entities controlled by the issuer or under common control with the issuer, as well as any amounts sold by any predecessor of the issuer) in reliance on Section 4(a)(6) during the preceding 12-month period. The issuer would aggregate any amounts previously sold with the amount the issuer intends to raise in reliance on the exemption, and under the proposed rules, the combined amount could not exceed $1 million. An issuer would not include amounts sold in other exempt offerings during the preceding 12-month period. For example, if an issuer sold $800,000 pursuant to the exemption provided in Regulation D during the preceding 12 months, this amount would not be aggregated in an issuer's calculation to determine whether it had reached the maximum amount for purposes of Section 4(a)(6).[32] In addition, in determining the amount sold in reliance on Section 4(a)(6) during the preceding 12-month period, an issuer would not need to consider amounts received through methods that do not involve the offer or sale of securities (such as donations it received from a separate non-securities-based crowdfunding effort, contributions from friends and family, gifts, grants or loans).

Further, in light of Section 4A(g) and the reasons discussed above, we believe that an offering made in reliance on Section 4(a)(6) should not be integrated with another exempt offering made by the issuer, provided that each offering complies with the requirements of the applicable exemption that is being relied upon for the particular offering. An issuer could complete an offering made in reliance on Section 4(a)(6) that occurs simultaneously with, or is preceded or followed by, another exempt offering. An issuer conducting a concurrent exempt offering for which general solicitation is not permitted, however, would need to be satisfied that purchasers in that offering were not solicited by means of the offering made in reliance on Section 4(a)(6).[33] Similarly, any concurrent exempt offering for which general solicitation is permitted could not include an advertisement of the terms of an offering made in reliance on Section 4(a)(6) that would not be permitted under Section 4(a)(6) and the proposed rules.[34]

Under Section 4(a)(6), the amount of securities sold in reliance on Section 4(a)(6) by entities controlled by or under common control with the issuer must be aggregated with the amount to be sold by the issuer in the current offering to determine the aggregate amount sold in reliance on Section 4(a)(6) during the preceding 12-month period. The statute does not define the term ''controlled by or under common control with'' the issuer; however, the term ''control'' is defined in Securities Act Rule 405.[35] For purposes of determining whether an entity is ''controlled by or under common control with'' the issuer, an issuer would be required to consider whether it has ''control'' based on this definition.[36]

Under the proposed rules, the amount of securities sold in reliance on Section 4(a)(6) also would include securities sold by any predecessor of the issuer in reliance on Section 4(a)(6) during the preceding 12-month period.[37] We believe this approach is necessary to prevent an issuer from exceeding the $1 million limit by reorganizing the issuer into a new entity that would otherwise not be limited by previous sales made by its predecessor. For example, if an issuer reaches the $1 million limit under Section 4(a)(6), we do not believe the reorganization of the issuer into a new entity should permit the successor to make additional offers and sales in reliance on Section 4(a)(6) during the relevant 12-month period.

Request for Comment

1. Should we propose that the $1 million limit be net of fees charged by the intermediary to host the offering on the intermediary's platform? Why or why not? If so, are there other fees that we should allow issuers to exclude when determining the amount to be raised and whether the issuer has reached the $1 million limit?

2. As described above, we believe that issuers should not have to consider the amounts raised in offerings made pursuant to other exemptions when determining the amount sold during the preceding 12-month period for purposes of the $1 million limit in Section 4(a)(6). Should we require that certain exempt offerings be included in the calculation of the $1 million limit? If so, which types of offerings and why? If not, why not? As noted above, at this time the Commission is not proposing to consider the amounts raised in non-securities-based crowdfunding efforts in calculating the $1 million limit in Section 4(a)(6). Should the Commission propose to require that amounts raised in non-securities-based crowdfunding

[32] In contrast, if an issuer sold $800,000 in a crowdfunding transaction pursuant to Section 4(a)(6) during the preceding 12 months, the issuer would be required to count that amount toward the $1 million aggregate amount and, thus, could only offer and sell $200,000 more in reliance on Section 4(a)(6).

[33] For example, if the prospective investor in a concurrent private placement for which general solicitation is not permitted became interested in that private placement through some means other than the offering made in reliance on Section 4(a)(6), such as through a substantive, pre-existing relationship with the issuer or direct contact by the issuer or its agents outside of the offering made in reliance on Section 4(a)(6), then the fact that the offering made in reliance on Section 4(a)(6) was posted publicly on the intermediary's platform would not affect the availability of the other private placement exemption. On the other hand, if an investor first discovers the issuer through a solicitation in a Section 4(a)(6) offering, that investor would likely not be eligible to participate in a concurrent private placement in which general solicitation is not permitted.

[34] *See* proposed Rule 204 of Regulation Crowdfunding. *See also* discussion in Section II.B.4 below.

[35] *See* 17 CFR 230.405 (''The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.''). Exchange Act Rule 12b–2 similarly defines the term ''control.'' *See* 17 CFR 240.12b–2.

[36] *See* proposed Instruction to paragraph (c) of proposed Rule 100 of Regulation Crowdfunding.

[37] *See* proposed Rule 100(c) of Regulation Crowdfunding (proposing to define issuer to include all entities controlled by or under common control with the issuer and any predecessor of the issuer).

efforts be included in the calculation of the $1 million limit? Why or why not?

3. As described above, we believe that offerings made in reliance on Section 4(a)(6) should not necessarily be integrated with other exempt offerings if the conditions to the applicable exemptions are met. How would an alternative interpretation affect the utility of crowdfunding as a capital raising mechanism? Are there circumstances under which other exempt offers should be integrated with an offer made in reliance on Section 4(a)(6)? If so, what are those circumstances? Should we prohibit an issuer from concurrently offering securities in reliance on Section 4(a)(6) and another exemption? Why or why not? Should we prohibit an issuer from offering securities in reliance on Section 4(a)(6) within a specified period of time after or concurrently with a Rule 506(c) offering under Regulation D involving general solicitation? Why or why not? Should we prohibit an issuer from using general solicitation or general advertising under Rule 506(c) in a manner that is intended, or could reasonably be expected, to condition the market for a Section 4(a)(6) offering or generate referrals to a crowdfunding intermediary? Why or why not? Should issuers that began an offering under Section 4(a)(6) be permitted to convert the offering to a Rule 506(c) offering? Why or why not?

4. Under the proposed rules, whether an entity is controlled by or under common control with the issuer would be determined based on whether the issuer possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract or otherwise. This standard is based on the definition of ''control'' in Securities Act Rule 405. Is this approach appropriate? Why or why not? Should we define control differently? If so, how?

5. Under the proposed rules, the definition of issuer would include any predecessor of the issuer. Is this approach appropriate? Why or why not? Should an issuer aggregate amounts sold by an affiliate of the issuer when determining the aggregate amount sold in reliance on Section 4(a)(6) during the preceding 12-month period? Why or why not? If so, how should we define affiliate?

2. Investment Limitation

Under Section 4(a)(6)(B), the aggregate amount sold to any investor by an issuer, including any amount sold in reliance on the exemption during the 12-month period preceding the date of such transaction, cannot exceed: ''(i) The greater of $2,000 or 5 percent of the annual income or net worth of such investor, as applicable, if either the annual income or the net worth of the investor is less than $100,000; and (ii) 10 percent of the annual income or net worth of such investor, as applicable, not to exceed a maximum aggregate amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000.'' Section 4A(h) further provides that these dollar amounts shall be adjusted by the Commission not less frequently than once every five years based on the Consumer Price Index. As discussed in more detail below, Section 4A(h) also provides that the income and net worth of a natural person who is investing in a crowdfunding transaction pursuant to Section 4(a)(6) shall be calculated in accordance with the Commission's rules regarding the calculation of income and net worth of an accredited investor.[38]

Several commenters noted that Sections 4(a)(6)(B)(i) and (ii) technically subject some investors to two potential investment limits.[39] The language of the statute may be read to create potential conflicts or ambiguity between the two investment limits because paragraph (i) applies if ''either'' annual income or net worth is less than $100,000 and paragraph (ii) applies if ''either'' annual income or net worth is equal to or more than $100,000. Accordingly, in any situation in which annual income is less than $100,000 and net worth is equal to or more than $100,000 (or vice versa), the language of the statute may be read to cause both paragraphs to apply. Paragraph (i) also fixes the maximum annual investment by an investor at 5 percent of ''the annual income or net worth of such investor, as applicable'' and paragraph (ii) fixes the maximum annual investment by an investor at 10 percent of ''the annual income or net worth of such investor, as applicable'', but neither paragraph (i) nor paragraph (ii) explicitly states when that percentage should be applied against the investor's annual income and when the percentage should be applied against the investor's net worth. Finally, paragraph (i) sets a floor for the investment limit of $2,000 per year and paragraph (ii) sets a ceiling for the investment limit of $100,000 per year, but the statutory language does not explicitly state whether the floor applies if the maximum is calculated under paragraph (ii) or whether the ceiling applies if the maximum is calculated under paragraph (i). Accordingly, discretion is required in interpreting and applying this provision of the statute.

We believe that the appropriate approach to the investment limit provision is to provide for an overall investment limit of $100,000, but within that overall limit, to provide for a ''greater of'' limitation based on annual income and net worth. Under the proposed rules, therefore, if *both* annual income *and* net worth are less than $100,000, then a limit of $2,000 or 5 percent of annual income or net worth, whichever is greater, would apply. If either annual income or net worth exceeds $100,000, then a limit of 10 percent of annual income or net worth, whichever is greater, but not to exceed $100,000, would apply. We believe that this clarification would give effect to the provision and would be consistent with Congressional intent in providing investment limitations; however, we request comment below on whether to calculate the investment limit based on

[38] The definition of the term ''accredited investor'' is set forth in Rule 501(a) of Regulation D [17 CFR 230.501(a)] and includes any person who comes within one of the definition's enumerated categories of persons, or whom the issuer ''reasonably believes'' comes within any of the enumerated categories, at the time of the sale of the securities to that person. For natural persons, Rule 501(a) defines an accredited investor as a person: (1) Whose individual net worth, or joint net worth with that person's spouse, exceeds $1 million, excluding the value of the person's primary residence (the ''net worth test''); or (2) who had an individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year (the ''income test''). Although the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1577 (July 21, 2010), (the ''Dodd-Frank Act'') did not change the amount of the $1 million net worth test, it did change how that amount is calculated—by excluding the value of a person's primary residence. This change took effect upon the enactment of the Dodd-Frank Act. In December 2011, we amended Rule 501 to incorporate this change into the definition of accredited investor. See *Net Worth Standard for Accredited Investors,* Release No. 33–9287 (Dec. 21, 2011) [76 FR 81793 (Dec. 29, 2011)]. In addition, Section 413(b) of the Dodd-Frank Act specifically authorizes us to undertake a review of the definition of the term ''accredited investor'' as it applies to natural persons, it and requires us to undertake a review of the definition in its entirety every four years, beginning four years after enactment of the Dodd-Frank Act. Release No. 33–9416 (July 10, 2013) requests public comments on the definition of ''accredited investor.''

[39] *See* RocketHub Letter 1 (stating that the Commission should clarify that the greater of income or net worth will be used to determine the investment limit); NASAA Letter (stating that the Commission should resolve the ambiguity by requiring the lesser of the two investment limits); Ohio Division of Securities Letter (stating that the Commission should apply the stricter investment limitation); ABA Letter 1; Friedman Letter.

the lesser of annual income or net worth.

As required by Section 4A(h), the proposed rules would require a natural person's annual income and net worth to be calculated in accordance with the Commission's rules for determining accredited investor status.[40] Securities Act Rule 501 specifies the manner in which annual income and net worth are calculated for purposes of determining accredited investor status.[41] One commenter stated that Section 4(a)(6)(B) is unclear in regard to how to address the joint net worth of spouses.[42] The proposed rules would clarify that an investor's annual income and net worth may be calculated jointly with the income and net worth of the investor's spouse.[43] We believe that this approach is consistent with the rules for determining accredited investor status because the accredited investor definition contemplates both individual and joint income and net worth with a spouse as methods of calculating annual income and net worth.

We also are proposing to allow an issuer to rely on efforts that an intermediary takes in order to determine that the aggregate amount of securities purchased by an investor will not cause the investor to exceed the investor limits,[44] provided that the issuer does not have knowledge that the investor had exceeded, or would exceed, the investor limits as a result of purchasing securities in the issuer's offering.[45]

In discussing the investment limitations, one commenter requested that the Commission distinguish between retail investors and institutional or accredited investors and allow institutional and accredited investors to invest in excess of the investment limitations included in the statute.[46] Another commenter asked that the Commission clarify whether non-U.S. citizens or non-U.S. residents are bound by the same investment limits.[47] Three commenters proposed that the Commission create a two-tier regulatory system based on different investment limits to reduce the regulatory burden for small, local offerings.[48] One of the commenters suggested that one of the tiers could consist of a ''small local offering'' in which investment limits would be up to $250 per investor.[49] The commenter asserted that smaller investments could be subject to significantly reduced regulation because a $250 investment is unlikely to pose significant risk to an investor. The second commenter suggested reducing the anticipated personal disclosure requirements for investors who invest less than $500 through an intermediary that is a community development financial institution.[50]

The limitations in Section 4(a)(6)(B) apply to any investor seeking to participate in a crowdfunding transaction. We believe that Congress intended for investment opportunities through crowdfunding transactions relying on Section 4(a)(6) to be available to all types of investors and established the investment limitations accordingly.[51] The statute provides specific investment limits, and the only reference in the statute regarding changing those investment limits is the requirement that the Commission update the investment limits not less frequently than every five years based on the Consumer Price Index. Therefore, we do not believe it would be appropriate to alter those limits for any particular type of investor or, at this time, to create a different exemption based on different investment limits. Issuers can rely on other exemptions to offer and sell securities to accredited investors and institutional investors (and, in some cases, investors that do not meet the definition of accredited investor). As discussed above, concurrent offerings to these types of investors are possible if the conditions of the applicable exemption are met. Therefore, as proposed, the limitations would apply to all investors, including retail, institutional or accredited investors and both U.S. and non-U.S. citizens or residents.

Request for Comment

6. While we acknowledge that there is ambiguity in the statutory language and there is some comment regarding a contrary reading, we believe that the appropriate approach to the investment limitations in Section 4(a)(6)(B) is to provide for an overall investment limit of $100,000 and, within that limit, to provide for a ''greater of'' limitation based on an investor's annual income or net worth. In light of ambiguity in the statutory language, we are specifically asking for comment as to the question of whether we should instead require investors to calculate the investment limitation based on the investor's annual income or net worth at the five percent threshold of Section 4(a)(6)(B)(i) if either annual income or net worth is less than $100,000? Similarly, for those investors falling within the Section 4(a)(6)(B)(i) framework, should we require them to calculate the five percent investment limit based on the lower of annual income or net worth? Should we require the same for the calculation of the 10 percent investment limit within the Section 4(a)(6)(B)(ii) framework? If we were to pursue any of these calculations, would we unnecessarily impede capital formation?

7. The statute does not address how joint annual income or joint net worth should be treated for purposes of the investment limit calculation. The proposed rules clarify that annual income and net worth may be calculated jointly with the annual income and net worth of the investor's spouse. Is this approach appropriate? Should we distinguish between annual income and net worth and allow only one or the other to be calculated jointly for purposes of calculating the investment limit? Why or why not? Should the investment limit be calculated differently if it is based on the spouses' joint income, rather than each spouse's annual income? Why or why not?

8. We are proposing to permit an issuer to rely on the efforts that an intermediary takes in order to determine that the aggregate amount of securities purchased by an investor will not cause the investor to exceed the investor limits, provided that the issuer does not have knowledge that the investor had exceeded, or would exceed, the investor limits as a result of purchasing securities in the issuer's offering. Is this approach appropriate? Why or why not? Should an issuer be required to obtain a written representation from the investor that the investor has not and

[40] *See* proposed Instruction 1 to paragraph (a)(2) of proposed Rule 100 of Regulation Crowdfunding. *See also* note 9.

[41] *See* Securities Act Rule 501(a)(5) [17 CFR 230.501(a)(5)] (net worth) and Securities Act Rule 501(a)(6) [17 CFR 230.501(a)(6)] (income). Consistent with these rules, the calculation of a natural person's net worth for purposes of the investment limit would exclude the value of the primary residence of such person. A natural person's income for purposes of the investment limit calculation would be the lower of such person's income for each of the two most recent years as long as such person has a reasonable expectation of the same income level in the current year.

[42] *See* Friedman Letter.

[43] *See* proposed Instruction 2 to paragraph (a)(2) of proposed Rule 100 of Regulation Crowdfunding.

[44] *See* discussion in Section II.C.5.b.i below.

[45] *See* proposed Instruction 3 to paragraph (a)(2) of proposed Rule 100 of Regulation Crowdfunding.

[46] *See* CFIRA Letter 2.

[47] *See* TechnologyCrowdFund Letter 5.

[48] *See* ASBC Letter; City First Letter. *See also* Spinrad Letter 1 (supporting the two-tier approach described in the ASBC Letter).

[49] *See* ASBC Letter.

[50] *See* City First Letter.

[51] *See* 158 Cong. Rec. S1689 (daily ed. Mar. 15, 2012) (statement of Sen. Mark Warner) (''There is now the ability to use the Internet as a way for small investors to get the same kind of deals that up to this point only select investors have gotten that have been customers of some of the best known investment banking firms, where we can now use the power of the Internet, through a term called crowdfunding.'').

will not exceed the limit by purchasing from the issuer? Why or why not?

9. Should institutional and accredited investors be subject to the investment limits, as proposed? Why or why not? Should we adopt rules providing for another crowdfunding exemption with a higher investment limit for institutional and accredited investors? If so, how high should the limit be? Are there categories of persons that should not be subject to the investment limits? If yes, please identify those categories of persons. If the offering amount for an offering made in reliance on Section 4(a)(6) is not aggregated with the offering amount for a concurrent offering made pursuant to another exemption, as proposed, is it necessary to exclude institutional and accredited investors from the investment limits since they would be able to invest pursuant to another exemption in excess of the investment limits in Section 4(a)(6)?

10. Should we adopt rules providing for another crowdfunding exemption with different investment limits (*e.g.,* an exemption with a $250 investment limit and fewer issuer requirements), as one commenter suggested,[52] or apply different requirements with respect to individual investments under a certain amount, such as $500, as another commenter suggested?[53] Why or why not? If so, should the requirements for issuers and intermediaries also change? What investment limits and requirements would be appropriate? Would adopting such an exemption be consistent with the purposes of Section 4(a)(6)?

11. Should we consider additional investment limits on transactions made in reliance on Section 4(a)(6) where the purchaser's annual income and net worth are both below a particular threshold? If so, what should such threshold be and why?

3. Transaction Conducted Through an Intermediary

Under Section 4(a)(6)(C), a transaction in reliance on Section 4(a)(6) must be ''conducted through a broker or funding portal that complies with the requirements of [S]ection 4A(a).'' We believe that requiring an issuer to use only one intermediary, rather than allowing the issuer to use multiple intermediaries, to conduct an offering or concurrent offerings in reliance on Section 4(a)(6) would help foster the creation of a crowd and better accomplish the purpose of the statute. As discussed above, a central tenet of the concept of crowdfunding is presenting members of the crowd with an idea or business so members of the crowd can share information and evaluate the idea or business. Allowing an issuer to conduct a single offering or simultaneous offerings in reliance on Section 4(a)(6) through more than one intermediary would diminish the ability of the members of the crowd to effectively share information, because essentially, there would be multiple ''crowds.'' Also, because practices among intermediaries may differ, were multiple intermediaries to conduct a single offering or simultaneous offerings, this could result in significant differences among such offerings. Finally, allowing an issuer to conduct an offering using more than one intermediary would make it more difficult for intermediaries to determine whether an issuer is exceeding the $1 million aggregate offering limit. Therefore, in addition to requiring the use of an intermediary in connection with an offering made in reliance on Section 4(a)(6), the proposed rules would prohibit an issuer from using more than one intermediary to conduct an offering or concurrent offerings made in reliance on Section 4(a)(6).[54]

Although the statute does not expressly require it, we also believe that in enacting Section 4(a)(6)(C), Congress contemplated that crowdfunding transactions made in reliance on Section 4(a)(6) and activities associated with these transactions would occur over the Internet or other similar electronic medium that is accessible to the public.[55] We believe that an ''online-only'' requirement enables the public to access offering information and share information publicly in a way that will allow members of the crowd to decide whether or not to participate in the offering and fund the business or idea.[56] We believe that other mechanisms would not offer this opportunity. The proposed rules would require that an intermediary, in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6), effect such transactions exclusively through an intermediary's platform.[57] We propose to define the term ''platform'' to mean an Internet Web site or other similar electronic medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6).[58] The requirement that a transaction be conducted exclusively through a platform does not preclude an intermediary from performing back office and other administrative functions offline. Therefore, we propose to state that intermediaries may engage in back office and other administrative functions other than on their platforms.[59] Examples of such functions include document maintenance, preparation of notices and confirmations, preparing internal policies and procedures, defining and approving business security requirements and policies for information technology, and preparing information required to be filed or otherwise provided to regulators.

The proposed rules would accommodate other electronic media that currently exist or may develop in the future. For instance, applications for mobile communication devices, such as cell phones or smart phones, could be used to display offerings and to permit investors to make investment commitments. In our releases concerning the use of electronic media for delivery purposes, we discussed so-called ''electronic-only'' offerings as those in which investors are permitted to participate only if they agree to accept electronic delivery of all documents and other information in connection with the offering.[60] As discussed below, the proposed rules would require that an intermediary, in its standard account opening materials,

[52] *See* ASBC Letter.

[53] *See* City First Letter.

[54] *See* proposed Instruction 1 to paragraph (a)(3) of proposed Rule 100 of Regulation Crowdfunding.

[55] In this regard, we note that Section 301 of the JOBS Act states that ''[Title III] may be cited as the 'Capital Raising Online While Deterring Fraud and Unethical Non-Disclosure Act of 2012'''. *See* Section 301 of the JOBS Act. *See also* 158 Cong. Rec. S1689 (daily ed. March 15, 2012) (statement of Sen. Mark Warner) (''There is now the ability to use the Internet as a way for small investors to get the same kind of deals that up to this point only select investors have gotten . . ., where we can now use the power of the Internet, through a term called crowdfunding.''); *id.* at S1717 (Statement of Sen. Mary Landrieu) (''this crowdfunding bill—which is, in essence, a way for the Internet to be used to raise capital. . . .'').

[56] *See* note 2 and accompanying text. The Internet is considered to be a ''perfect technology capable of aggregating millions of disparate, independent ideas in the way markets and intelligent voting systems do, without the dangers of 'too much communication' and compromise.'' Brabham, note 1 (citing James Surowiecki, *The Wisdom of Crowds* xix (2004)).

[57] *See* proposed Rule 100(a)(3) of Regulation Crowdfunding.

[58] *See* proposed Rule 100(d) of Regulation Crowdfunding.

[59] *See* proposed Instruction 2 to paragraph (a)(3) of proposed Rule 100 of Regulation Crowdfunding.

[60] *See, e.g., Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information,* Release No. 34–37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)]; *Use of Electronic Media,* Release No. 34–42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''*Use of Electronic Media*'').

obtain from investors consent for such electronic delivery.[61]

Some commenters appear to assume that all offers and sales made in reliance on Section 4(a)(6) would be conducted online.[62] One commenter recommended that the Commission expressly require that all disclosure and affirmations required for crowdfunding transactions take place online.[63] In contrast, another commenter requested that we permit some crowdfunding elements to take place offline to encourage local community investments through entities such as community banks, community development companies and business development companies.[64] This commenter stated that permitting crowdfunding to take place offline also will help persons without Internet access to invest. The proposed rules would, subject to certain conditions, separately permit outreach by third parties and a third party's promotion of an issuer's offering through communication channels provided by an intermediary.[65] In addition, an issuer may provide a notice, subject to the conditions in the proposed rules, that directs potential investors to the intermediary's platform through which the issuer will conduct its offering.[66] Finally, we are not proposing to permit offerings to be conducted through means other than the Internet or similar electronic medium because we believe that allowing other non-electronic means would be inconsistent with the underlying principles of crowdfunding and the statute. Offerings made by other means would not be widely accessible by the public, which would defeat the benefit of the collective wisdom of the members of the crowd. We also believe that Internet access may be available to the public, such as through local public libraries, alleviating one commenter's concern about some persons not being able to invest unless the offerings also take place offline.

Request for Comment

12. The proposed rules would prohibit an issuer from conducting an offering or concurrent offerings in reliance on Section 4(a)(6) using more than one intermediary. Is this proposed approach appropriate? Why or why not? If issuers were permitted to use more than one intermediary, what requirements and other safeguards should or could be employed?

13. Should we define the term ''platform'' in a way that limits crowdfunding in reliance on Section 4(a)(6) to transactions conducted through an Internet Web site or other similar electronic medium? Why or why not?

14. Should we permit crowdfunding transactions made in reliance on Section 4(a)(6) to be conducted through means other than an intermediary's electronic platform? If so, what other means should we permit? For example, should we permit community-based funding in reliance on Section 4(a)(6) to occur other than on an electronic platform?[67] To foster the creation and development of a crowd, to what extent would such other means need to provide members of the crowd with the ability to observe and comment (*e.g.,* through discussion boards or similar functionalities) on the issuer, its business or statements made in the offering materials?

15. Should we allow intermediaries to restrict who can access their platforms? For example, should we permit intermediaries to provide access by invitation only or only to certain categories of investors? Why or why not? Would restrictions such as these negatively impact the ability of investors to get the benefit of the crowd and its assessment of an issuer, business or potential investment? Would these kinds of restrictions affect the ability of small investors to access the capital markets? If so, how?

16. As noted above, the proposed rules would not require intermediaries' back office or other administrative functions to be conducted exclusively on their platforms. Do the proposed rules require any clarification? Are there other activities in which an intermediary may engage that would not be considered back office or administrative functions and that should be permitted to occur other than on a platform? If so, what activities are they, and why should they be permitted to occur other than on a platform?

4. Exclusion of Certain Issuers From Eligibility Under Section 4(a)(6)

Section 4A(f) excludes certain categories of issuers from eligibility to rely on Section 4(a)(6) to engage in crowdfunding transactions. These issuers are: (1) Issuers that are not organized under the laws of a state or territory of the United States or the District of Columbia; (2) issuers that are subject to Exchange Act reporting requirements;[68] (3) investment companies as defined in the Investment Company Act of 1940 (the ''Investment Company Act'')[69] or companies that are excluded from the definition of investment company under Section 3(b) or 3(c) of the Investment Company Act;[70] and (4) any other issuer that the Commission, by rule or regulation, determines appropriate.

One commenter suggested that the Commission's rules should specify that the crowdfunding exemption under Section 4(a)(6) is not available for blank check companies or hedge funds and noted that ''permitting these kinds of high-risk and often complex entities to use the exemption is not consistent with the statutory goal of deterring fraud and unethical non-disclosure in crowdfunding offerings.''[71]

The proposed rules would exclude the categories of issuers identified in the statute,[72] as well as issuers that are disqualified from relying on Section 4(a)(6) pursuant to the disqualification provisions of Section 302(d) of the JOBS Act.[73] The proposed rules also would exclude an issuer that has sold securities in reliance on Section 4(a)(6) if the issuer has not filed with the Commission and provided to investors, to the extent required, the ongoing annual reports required by Regulation Crowdfunding[74] during the two years immediately preceding the filing of the required new offering statement.[75] We believe that the ongoing reporting requirement should benefit investors by enabling them to consider updated

[61] *See* proposed Rule 302(a) of Regulation Crowdfunding. The proposed rules would require consent to electronic delivery because we believe Congress contemplated that crowdfunding would, by its very nature, occur exclusively through electronic media.

[62] *See, e.g.,* MacDonald Letter (stating that readily-available information on the Internet already provides a safeguard for crowdfunding investors); NAASA Letter (stating that NASAA is considering whether open Internet access to funding portals would provide sufficient and updated information to state regulators).

[63] *See* Cera Technology Letter.

[64] *See* Tally Letter.

[65] *See* proposed Rule 205 of Regulation Crowdfunding (promoter compensation), proposed Rule 305 of Regulation Crowdfunding (payments to third parties) and proposed Rule 402(b)(6) of Regulation Crowdfunding (conditional safe harbor), discussed below in Sections II.B.5, II.C.7 and II.D.3, respectively.

[66] *See* proposed Rule 204 of Regulation Crowdfunding (advertising) discussed below in Section II.B.4.

[67] *See* City First Letter and note 355.

[68] These are issuers who are required to file reports with the Commission pursuant to Exchange Act Sections 13(a) (15 U.S.C. 78m(a)) or 15(d) (15 U.S.C. 78*o*(d)).

[69] 15 U.S.C 80a–1 *et seq.*

[70] 15 U.S.C. 80a–3(b) or (c).

[71] Commonwealth of Massachusetts Letter.

[72] *See* proposed Rules 100(b)(1)–(3) of Regulation Crowdfunding.

[73] *See* proposed Rule 100(b)(4) of Regulation Crowdfunding. *See also* proposed Rule 503 of Regulation Crowdfunding and Section II.E.6 below for a discussion of the disqualification provisions.

[74] *See* proposed Rules 202 and 203(b) of Regulation Crowdfunding and Section II.B.2 below for a discussion of the ongoing reporting requirements.

[75] *See* proposed Rule 100(b)(5) of Regulation Crowdfunding.

information about the issuer, thereby allowing them to make more informed investment decisions. If issuers fail to comply with this requirement, we do not believe that they should have the benefit of relying on the exemption under Section 4(a)(6) again until they file, to the extent required, the two most recent annual reports.

The proposed rules also would exclude an issuer that has no specific business plan or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. As described above, crowdfunding is a new and evolving method to raise money that serves as an alternative source of capital to support a wide range of ideas and ventures. We believe that the exemption under Section 4(a)(6) is intended to provide an issuer with an early stage project, idea or business an opportunity to share it publicly with a wider range of potential investors. Those potential investors may then share information with each other about the early stage proposal and use that information to decide whether or not to provide funding based on the ''wisdom of the crowd.'' Under such circumstances, this mechanism requires the public to have sufficient information about the issuer's proposal to discuss its merit and flaws.[76]

At the same time, an early stage proposal may not allow the crowdfunding mechanism to work appropriately if the issuer does not describe a specific project, idea, or business, or is seeking funding for unspecified corporate transactions. In such cases, individuals reviewing the proposal may not have sufficient information to formulate a considered view of the proposal, or the proposal may be less likely to attract enough perspectives to inform a crowd decision. Investors who nonetheless choose to participate may therefore be more likely to be participating in an issuance that has not been reviewed by the crowd in the manner contemplated by the exemption under Section 4(a)(6).

We are cognizant of the challenges associated with distinguishing between early stage proposals that should provide information sufficient to support the crowdfunding mechanism and those that cannot by their terms do so. We preliminarily believe that an appropriate balance can be struck by excluding an issuer that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. As described below, we do not expect that a specific ''business plan'' requires a formal document prepared by management or used for marketing to investors.[77] We understand that issuers engaging in crowdfunding transactions may have businesses at various stages of development in differing industries, and therefore, we believe that a specific ''business plan'' could encompass a wide range of project descriptions, articulated ideas, and business models. In particular, we recognize that the business plan for startups or small businesses seeking to rely on Section 4(a)(6) may not be fully developed or highly specific and that for many it may be less defined or detailed than the plan associated with larger issuers.

With respect to hedge funds, we believe that under Section 4A(f)(3), hedge funds would be excluded from eligibility to rely on Section 4(a)(6) because hedge funds and other private funds typically rely on one of the exclusions from the definition of investment company under Section 3(c) of the Investment Company Act.[78]

Request for Comment

17. Section 4A(b)(4) requires that, ''not less than annually, [the issuer] file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer. . . .'' Should an issuer be excluded from engaging in a crowdfunding transaction in reliance on Section 4(a)(6), as proposed, if it has not filed with the Commission and provided to investors, to the extent required, the ongoing annual reports required by proposed Regulation Crowdfunding during the two years immediately preceding the filing of the required offering statement? Why or why not? Should an issuer be eligible to engage in a crowdfunding transaction in reliance on Section 4(a)(6) if it is delinquent in other reporting requirements (*e.g.,* updates regarding the progress of the issuer in meeting the target offering amount)? [79] Why or why not? Should the exclusion be limited to a different timeframe (*e.g.,* filings required during the five years or one year immediately preceding the filing of the required offering statement)?

18. Is the proposed exclusion of issuers who fail to comply with certain ongoing annual reporting requirements too broad? If so, how should it be narrowed and why? Should the exclusion cover issuers whose affiliates have sold securities in reliance on Section 4(a)(6) if the affiliates have not complied with the ongoing annual reporting requirements? If so, should this encompass all affiliates? If not, which affiliates should it cover? Should we exclude any issuer with an officer, director or controlling shareholder who served in a similar capacity with another issuer that failed to file its annual reports? Why or why not?

19. What specific risks do investors face with ''idea-only'' companies and ventures? Please explain. Do the proposed rules provide sufficient protection against the inherent risks of such ventures? Why or why not?

20. Does the exclusion of issuers that do not have a specific idea or business plan from eligibility to rely on Section 4(a)(6) strike the appropriate balance between the funding needs of small issuers and the information requirements of the crowd? Why or why not? Are there other approaches that would strike a better balance among those considerations? If the proposed approach is appropriate, should we define ''specific business plan'' or what criteria could be used to identify them? How would any such criteria comport with the disclosure obligations described in Section II.B.1.a.i.(b) (description of the business) below?

21. Are there other categories of issuers that should be precluded from relying on Section 4(a)(6)? If so, what categories of issuers and why?

B. Requirements on Issuers

1. Disclosure Requirements

Section 4A(b)(1) provides that an issuer offering or selling securities in reliance on Section 4(a)(6) must file specified disclosures, including financial disclosures, with the Commission, provide these disclosures to investors and the relevant broker or

[76] *See, e.g.,* Section 4A(b)(1)(C) (requiring a description of the business of the issuer and the anticipated business plan of the issuer).

[77] *See* discussion below in Section II.B.1.a.i.(b) below.

[78] Investment Advisers Act (''Advisers Act'') Form PF defines a ''hedge fund'' generally as any ''private fund'' (other than a securitized asset fund) that: (1) Pays a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses); (2) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (3) may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration). *See* Form PF: Glossary of Terms at 4, *available at http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf.* A ''private fund'' is defined as any issuer that would be an investment company as defined in Section 3 of the Investment Company Act but for Section 3(c)(1) or 3(c)(7) of that Act. *Id.* at 7.

[79] *See* Section II.B.1.b below for a discussion of progress updates.

funding portal and make these disclosures available to potential investors. These disclosures include:

- The name, legal status, physical address and Web site address of the issuer [80];
- The names of the directors and officers (and any persons occupying a similar status or performing a similar function), and each person holding more than 20 percent of the shares of the issuer [81];
- a description of the business of the issuer and the anticipated business plan of the issuer [82];
- a description of the financial condition of the issuer[83];
- a description of the stated purpose and intended use of the proceeds of the offering sought by the issuer with respect to the target offering amount [84];
- the target offering amount, the deadline to reach the target offering amount and regular updates regarding the progress of the issuer in meeting the target offering amount [85];
- the price to the public of the securities or the method for determining the price [86]; and
- a description of the ownership and capital structure of the issuer.[87] In addition, Section 4A(b)(1)(I) specifies that the Commission may require additional disclosures for the protection of investors and in the public interest.

Commenters expressed concerns about the extent of the disclosure requirements and stated that overly burdensome rules would make offers and sales in reliance on Section 4(a)(6) prohibitively expensive.[88] We recognize these concerns and have considered them in determining the disclosure requirements that we should propose in this release.

The proposed rules generally describe the type of information that issuers would be required to disclose. We expect, however, that an issuer, along with the intermediary, would determine the format that best conveys the required disclosures and any other information the issuer determines is material to investors.[89] We recognize that there are numerous ways to achieve that goal and, as such, we are not proposing to mandate a specific disclosure format.[90] Similarly, to the extent some of the required disclosures overlap, issuers would not be required to duplicate disclosures.

As discussed further in Section II.B.3, we are proposing to require issuers to file the disclosures with the Commission on Form C.[91] As proposed, Form C would be filed in the standard format of eXtensible Markup Language (XML). An XML-based fillable form would enable issuers to provide information in a convenient medium without requiring the issuer to purchase or maintain additional software or technology. This would provide the Commission with data about offerings made in reliance on Section 4(a)(6). Information not required to be provided in text boxes would be filed as attachments to Form C.

Request for Comment

22. Rule 306 of Regulation S–T requires that all electronic filings made with the Commission, including the filings that would be required under the proposed rules, be in English. Some startups and small businesses, and their potential investors, may principally communicate in a language other than English. Should we amend Rule 306 to permit filings by issuers under the proposed rules to be filed in the other language? Why or why not? If we retain the requirement to make filings only in English, will this impose a disproportionate burden on issuers and potential investors who principally communicate in a language other than English? What will be the impact on capital formation for such issuers?

a. Offering Statement Disclosure Requirements

i. Information About the Issuer and the Offering

(a) General Information About the Issuer, Officers and Directors

Consistent with Sections 4A(b)(1)(A) and (B), we are proposing to require an issuer to disclose information about its legal status, directors, officers and certain shareholders and how interested parties may contact the issuer. Specifically, an issuer would be required to disclose:

- Its name and legal status, including its form of organization, jurisdiction in which it is organized and date of organization [92];
- its physical address and its Web site address [93]; and
- the names of the directors and officers, including any persons occupying a similar status or performing a similar function, all positions and offices with the issuer held by such persons, the period of time in which such person served in the position or office and their business experience during the past three years,[94] including:
  - each person's principal occupation and employment, including whether any officer is employed by another employer; and
  - the name and principal business of any corporation or other organization in which such occupation and employment took place.

Although the statute does not define ''officer,'' the term is defined in Securities Act Rule 405 [95] and in Exchange Act Rule 3b–2.[96] We are proposing to define ''officer'' consistent with these existing rules. Thus, an issuer would be required to disclose information regarding its president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer and any person routinely performing corresponding functions with respect to

[80] Section 4A(b)(1)(A).

[81] Section 4A(b)(1)(B).

[82] Section 4A(b)(1)(C).

[83] Section 4A(b)(1)(D). This provision also establishes a framework of tiered financial disclosure requirements based on aggregate offering amounts for offerings under Section 4(a)(6) within the preceding 12-month period.

[84] Section 4A(b)(1)(E).

[85] Section 4A(b)(1)(F).

[86] Section 4A(b)(1)(G). This provision also requires that ''prior to sale, each investor shall be provided in writing the final price and all required disclosures, with a reasonable opportunity to rescind the commitment to purchase the securities.'' This provision is addressed in Sections II.C.5 and II.C.6 below.

[87] Section 4A(b)(1)(H). Specifically, Section 4A(b)(1)(H) requires a description of: ''(i) Terms of the securities of the issuer being offered and each other class of security of the issuer . . .; (ii) a description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered; (iii) the name and ownership level of each existing shareholder who owns more than 20 percent of any class of the securities of the issuer; (iv) how the securities being offered are being valued . . .; and (v) the risks to purchasers of the securities relating to minority ownership in the issuer, the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer, or transactions with related parties.''

[88] *See* Vim Funding Letter; ExpertBeacon Letter; CrowdFund Connect Letter.

[89] Section II.B.3 below further discusses the proposed format of Form C and requests comments on the format and presentation of the information.

[90] While the proposed rules do not mandate a specific disclosure format, Rule 306 of Regulation S–T (17 CFR 232.306) requires that all electronic filings made with the Commission, including the filings that would be required under the proposed rules, be in English. The proposed rules would not, however, prevent an issuer from providing to the relevant intermediary both an English and a foreign language version of the information for the intermediary to make publicly available through its platform. The anti-fraud and civil liability provisions of the Securities Act would apply equally to both the English and the foreign language version of the information.

[91] Issuers would use Form C to provide the required disclosures about the crowdfunding transaction and the information required to be filed annually. *See* Section II.B.3 below.

[92] *See* proposed Rule 201(a) of Regulation Crowdfunding.

[93] *Id.*

[94] *See* proposed Rule 201(b) of Regulation Crowdfunding.

[95] 17 CFR 230.405.

[96] 17 CFR 240.3b–2.

any organization, whether incorporated or unincorporated, to the extent it has individuals serving in these capacities.

We are proposing to require disclosure of the business experience of directors and officers of the issuer during the past three years. A three-year period is less than the five-year period that applies to issuers conducting registered offerings [97] or exempt offerings pursuant to Regulation A.[98] We believe that startups and small businesses that may seek to raise capital in reliance on Section 4(a)(6) generally would be smaller than the issuers conducting registered offerings or exempt offerings pursuant to Regulation A; [99] thus, we believe that the less burdensome three-year period would reduce the compliance cost for issuers while still providing potential investors with sufficient information about the business experience of directors and officers of the issuer to make an informed investment decision.

Section 4A(b)(1)(B) requires disclosure of ''the names of . . . each person holding more than 20 percent of the shares of the issuer.'' In contrast, Section 4A(b)(1)(H)(iii) requires disclosure of the ''name and ownership level of each existing shareholder who owns more than 20 percent *of any class* of the securities of the issuer'' (emphasis added). The proposed rules would require disclosure of the names of persons, as of the most recent practicable date, who are the beneficial owners of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.[100] We refer to this group of persons as ''20 Percent Beneficial Owners.'' We believe that the universe of 20 Percent Beneficial Owners should be the same for the disclosure requirements and the disqualification provisions[101] because this would ease the burden on issuers by requiring issuers to only identify one set of persons who would be the subject of these rules. We believe that assessing beneficial ownership based on total outstanding voting securities is consistent with Section 4A(b)(1)(B). Section 4A(b)(1)(B) is not limited to voting equity securities, but we believe the limitation would be necessary to clarify how beneficial ownership would be required to be calculated since issuers could potentially have multiple classes of securities with different voting powers. Assessing beneficial ownership based on ownership of total outstanding voting securities, rather than based on ownership of any class of securities as potentially contemplated by Section 4A(b)(1)(H)(iii), also should ease the burden of compliance because there would be fewer 20 Percent Beneficial Owners to track.

Neither Section 4A(b)(1)(B) nor Section 4A(b)(1)(H)(iii) states as of what date the beneficial ownership should be calculated. The proposed rules would require issuers to calculate beneficial ownership as of the most recent practicable date.[102] This is the same requirement that applies to issuers conducting registered offerings or Exchange Act reporting companies.[103] We believe that it is appropriate to provide issuers relying on Section 4(a)(6) the flexibility to calculate beneficial ownership as of the most recent practicable date, otherwise such issuers would be subject to a more burdensome standard than the one that applies to issuers conducting registered offerings or Exchange Act reporting companies.

Request for Comment

23. Under the proposed rules the definition of the term ''officer'' is consistent with how that term is defined in Securities Act Rule 405 [104] and in Exchange Act Rule 3b–2.[105] Should we instead define ''officer'' consistent with the definition of ''executive officer'' in Securities Act Rule 405 [106] and in Exchange Act Rule 3b–7?[107] Why or why not? Which definition would be more appropriate for the types of issuers that would be relying on the exemption?

24. Are these proposed disclosure requirements relating to the issuer and its officers and directors appropriate? Why or why not? Should we only require the disclosures specifically called for by statute or otherwise modify or eliminate any of the proposed requirements? Should we require any additional disclosures (*e.g.,* disclosure about significant employees)? Is there other general information about the issuer or its officers and directors that we should require to be disclosed? If so, what information and why? For example, should we require disclosure of any court orders, judgments or civil litigation involving any directors and officers, including any persons occupying a similar status or performing a similar function? Why or why not? If so, what time period should this disclosure cover and why?

25. The proposed rules would require disclosure of the business experience of directors and officers of the issuer during the past three years. Is the three-year period an appropriate amount of time? Why or why not? If not, please discuss what would be an appropriate amount of time and why. Should the requirement to disclose the business experience of officers and directors include a specific requirement to disclose whether the issuer's directors and officers have any prior work or business experience in the same type of business as the issuer? Why or why not?

26. The proposed rules would require disclosure of the names of persons who are beneficial owners of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power. Is this approach appropriate? Why or why not? Should the proposed rules require disclosure of the names of beneficial owners of 20 percent or more of any class of the issuer's voting securities, even if such beneficial ownership does not exceed 20 percent of all of the issuer's outstanding voting equity securities? Why or why not? Should the proposed disclosure requirement apply to the names of beneficial owners of 20 percent or more, as proposed, or to more than 20 percent of the issuer's outstanding voting equity securities? Why or why not?

27. The proposed rules would require that beneficial ownership be calculated as of the most recent practicable date. Is this approach appropriate? Why or why not? Should beneficial ownership be calculated as of a different date? For example, should the reported beneficial ownership only reflect information as of the end of a well-known historical period, such as the end of a fiscal year? Please explain. Should there be a maximum amount of time from this calculation date to the filing to ensure that the information is current? If so, what maximum amount of time would be appropriate?

28. Should we provide additional guidance on how to calculate beneficial ownership on the basis of voting power? If so, what should that guidance include? Should the proposed rules

[97] *See* Item 401(e) of Regulation S–K [17 CFR 229.401(e)].

[98] *See* Item 8(c) of Form 1–A [17 CFR 239.90].

[99] There is no cap on the amount of proceeds that may be raised in a registered offering, and Regulation A limits offerings to $5 million.

[100] *See* proposed Rule 201(c) of Regulation Crowdfunding.

[101] *See* proposed Rule 503 of Regulation Crowdfunding and Section II.E.6 below for a discussion of the proposed disqualification provisions. This approach also would be consistent with how beneficial ownership is calculated for the Rule 506 disqualification rules. *See Disqualification of Felons and Other ''Bad Actors'' from Rule 506 Offerings,* Release No. 33–9414 (July 10, 2013) [78 FR 44729 (July 24, 2013)] (''*Disqualification Adopting Release*'').

[102] *See* proposed Rule 201(c) of Regulation Crowdfunding.

[103] *See* Item 403 of Regulation S–K [17 CFR 229.403].

[104] 17 CFR 230.405.

[105] 17 CFR 240.3b–2.

[106] 17 CFR 230.405.

[107] 17 CFR 240.3b–7.

require disclosure of the name of a person who has investment power over, an economic exposure to or a direct pecuniary interest in the issuer's securities even if that person is not a 20 Percent Beneficial Owner? Why or why not?

(b) Description of the Business

Consistent with Section 4A(b)(1)(C), we are proposing to require an issuer to disclose information about its business and business plan.[108] One commenter noted that the term ''business plan'' traditionally referred to a document prepared by management for internal use only and more recently has been used to refer to a marketing document used to solicit investors.[109] We do not expect issuers to provide those types of documents in response to this requirement.[110] Although two commenters suggested that the Commission clarify the term ''business plan,'' [111] the proposed rules would not specify the disclosures that an issuer must include in the description of the business and the business plan. We understand that issuers engaging in crowdfunding transactions may have businesses at various stages of development in differing industries, and therefore, we believe that the proposed rules should provide flexibility for issuers to disclose the information about their businesses.

Request for Comment

29. Are these proposed disclosure requirements appropriate? Why or why not? Should we require any additional disclosures? Should we prescribe specific disclosure requirements about the business of the issuer and the anticipated business plan of the issuer or provide a non-exclusive list of the types of information an issuer should consider disclosing? Why or why not? If so, what specific disclosures about the issuer's business or business plans should we require or include in a non-exclusive list? For example, should we explicitly require issuers to describe any material contracts of the issuer, any material litigation or any outstanding court order or judgment affecting the issuer or its property? Why or why not?

30. Would more specific line item disclosures be more workable for issuers relying on Section 4A or provide more useful guidance for such issuers? Would such disclosures be more useful to investors? Why or why not? For example, should we require issuers to provide a business description incorporating the information that a smaller reporting company would be required to provide in a registered offering pursuant to Item 101(h) of Regulation S–K? [112] Why or why not? Should we require issuers to provide information regarding their plan of operations, similar to that required by Item 101(a)(2) of Regulation S–K [113] in registered offerings by companies with limited operating histories? Why or why not?

(c) Use of Proceeds

The proposed rules, consistent with Section 4A(b)(1)(E), would require an issuer to provide a description of the purpose and intended use of the offering proceeds.[114] One commenter suggested that we require issuers to be specific and detailed when making this disclosure.[115] We expect that such disclosure would provide a sufficiently detailed description of the intended use of proceeds to permit potential investors to evaluate the investment. For example, an issuer may, among other uses, intend to use the proceeds of an offering to acquire assets or businesses, compensate the intermediary or its own employees or repurchase outstanding securities of the issuer. In its description, an issuer should use its judgment regarding the level of detail in its disclosures regarding the assets or businesses that the issuer anticipates acquiring, if applicable. If the proceeds will be used to compensate the intermediary, the issuer should disclose the amount to be used for such compensation. If the proceeds will be used to compensate existing employees and/or to hire new employees, the issuer should consider disclosing whether the proceeds will be used for salaries or bonuses and how many employees it plans to hire, as applicable. If the issuer will repurchase outstanding issuer securities, it should consider disclosing its plans, terms and purpose for repurchasing the securities. An issuer also should consider disclosing how long the proceeds will satisfy the operational needs of the business. If an issuer does not have definitive plans for the proceeds, but instead has identified a range of possible uses, then the issuer should identify and describe each probable use and factors impacting the selection of each particular use.[116] If an issuer indicates that it will accept proceeds in excess of the target offering amount,[117] the issuer would be required to provide a separate, reasonably detailed description of the purpose and intended use of any excess proceeds with similar specificity.[118]

Request for Comment

31. Are these proposed disclosure requirements appropriate? Why or why not? Should we require any additional disclosures, including specifying items required to be disclosed? Is the proposed standard sufficiently clear such that it would result in investors being provided with an adequate amount of information? If not, how should we change the disclosure requirement? Should the rules include a non-exclusive list of examples that issuers should consider when providing disclosure, similar to the examples discussed above?

32. Under what circumstances, if any, should an issuer be required to update the use of proceeds disclosures?

33. Is there other information regarding the purpose of the offering and use of proceeds that we should require to be disclosed? If so, what information? Should any of the examples above be included as requirements in the rules? Why or why not?

(d) Target Offering Amount and Deadline

Consistent with Section 4A(b)(1)(F), the proposed rules would require issuers to disclose the target offering amount and the deadline to reach the target offering amount.[119] In addition, an issuer would be required to disclose whether it will accept investments in excess of the target offering amount and, if it will, the issuer would be required to disclose, at the commencement of the offering, the maximum amount it will

[108] *See* proposed Rule 201(d) of Regulation Crowdfunding.

[109] *See* Ohio Division of Securities Letter.

[110] Companies filing a registration statement or other filings that require a description of the business include a description of the business without providing a formal business plan. *See* Item 101 of Regulation S–K [17 CFR 229.101]. Our approach under proposed Rule 201(d) of Regulation Crowdfunding is consistent with that practice.

[111] *See* Cones Letter; Ohio Division of Securities Letter.

[112] 17 CFR 229.101(h).

[113] 17 CFR 229.101(a)(2).

[114] *See* proposed Rule 201(i) of Regulation Crowdfunding.

[115] *See* Williams Letter (stating that an issuer should disclose how the issuer arrived at the offering target, an itemization of expected expenses within the intended use of the proceeds, a contingency plan for the use of the proceeds should circumstances change and what will be done with any leftover proceeds upon completing the intended use).

[116] *See* proposed Instruction to paragraph (i) of proposed Rule 201 of Regulation Crowdfunding.

[117] *See* Section II.B.1.a.i(d) below.

[118] *See* proposed Instruction to paragraph (i) of proposed Rule 201 of Regulation Crowdfunding.

[119] *See* proposed Rule 201(g) of Regulation Crowdfunding.

accept.[120] For example, if the issuer sets a target offering amount of $200,000 but is willing to accept up to $750,000, the issuer would be required to disclose both the $200,000 target offering amount and the $750,000 maximum offering amount that it will accept.[121] In addition, the issuer would be required to disclose, at the commencement of the offering, how shares in oversubscribed offerings would be allocated.[122] If this disclosure is made, we do not believe it would be necessary for us to prescribe how oversubscribed offerings would be allocated because this approach would allow issuers the flexibility to structure the offering as they believe appropriate. At the same time, this approach would provide investors with the disclosure they need to make an informed investment decision.

We believe that investors in a crowdfunding transaction would benefit from clear disclosure about their right to cancel, the circumstances under which an issuer may close an offering early and the need to reconfirm the investment commitment under certain circumstances, so investors are more aware of their rights to rescind an investment commitment.[123] As such, we propose to require issuers to describe the process to cancel an investment commitment or to complete the transaction once the target amount is met,[124] including a statement that:

- Investors may cancel an investment commitment until 48 hours prior to the deadline identified in the issuer's offering materials; [125]
- the intermediary will notify investors when the target offering amount has been met;
- if an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early if it provides notice about the new offering deadline at least five business days prior to that new deadline (absent another material change that would require an extension of the offering and reconfirmation of the investment commitment); [126] and
- if an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering and the investor will receive securities in exchange for his or her investment.

We also propose to require issuers to disclose that if an investor does not reconfirm his or her investment commitment after a material change is made to the offering, the investor's investment commitment will be cancelled and committed funds will be returned.[127] The proposed rules also would require issuers to disclose that if the sum of the investment commitments does not equal or exceed the target offering amount at the time of the offering deadline, no securities will be sold in the offering, investment commitments will be cancelled and committed funds will be returned.[128]

Request for Comment

34. Are these proposed disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements? Should we require any additional disclosures?

35. The proposed rules would require an issuer willing to accept investments in excess of the target offering amount to provide, at the commencement of the offering, the disclosure that would be required in the event the offer is oversubscribed. Is this approach appropriate? Why or why not?

(e) Offering Price

Consistent with Section 4A(b)(1)(G), the proposed rules would require an issuer to disclose the offering price of the securities or the method for determining the price, provided that prior to the sale, each investor is provided in writing the final price and all required disclosures.[129]

Request for Comment

36. Are these proposed disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements? Should we require any additional disclosures? Please explain.

(f) Ownership and Capital Structure

Consistent with Section 4A(b)(1)(H), the proposed rules would require an issuer to provide a description of its ownership and capital structure.[130] This disclosure would include:

- The terms of the securities being offered and each other class of security of the issuer, including the number of securities being offered and/or outstanding, whether or not such securities have voting rights, any limitations on such voting rights, how the terms of the securities being offered may be modified and a summary of the differences between such securities and each other class of security of the issuer, and how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;
- a description of how the exercise of the rights held by the principal shareholders of the issuer could affect the purchasers of the securities;
- the name and ownership level of persons who are 20 Percent Beneficial Owners;
- how the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future, including during subsequent corporate actions;
- the risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions including additional issuances of securities, issuer repurchases of securities, a sale of the issuer or of assets of the issuer or transactions with related parties; and
- a description of the restrictions on the transfer of the securities.

We believe that investors in crowdfunding transactions would benefit from clear disclosure about the terms of the securities being offered and each other class of security of the issuer. The proposed rules would require disclosure of the number of securities being offered and/or outstanding,

[120] *See* proposed Rule 201(h) of Regulation Crowdfunding.

[121] The issuer in this case also would need to disclose the intended use of the additional proceeds. *See* proposed Instruction to paragraph (i) of proposed Rule 201 of Regulation Crowdfunding. *See also* Section II.B.1.a.i(c) above. In addition, the issuer in this case would need to provide audited financial statements at the commencement of the offering, rather than financial statements reviewed by an independent public accountant as would be required for the lower target amount. *See* Section II.B.1.a.ii below for a discussion of the financial statements requirements. As another example, an issuer that sets a target offering amount of $80,000 and a maximum offering amount of $105,000 would be required to provide financial statements reviewed by an independent public accountant (rather than tax returns for the most recently completed fiscal year and financial statements certified by the principal executive officer).

[122] *See* proposed Rule 201(h) of Regulation Crowdfunding.

[123] Although not specifically required by Title III, Securities Act Section 4A(b)(1)(I) provides us with discretion to require issuers engaged in transactions in reliance on Section 4(a)(6) to provide additional information for the protection of investors and in the public interest.

[124] *See* proposed Rule 201(j) of Regulation Crowdfunding.

[125] Section II.C.6 below further discusses the proposed cancelation provisions and requests comments on the proposed approach.

[126] *Id.*

[127] *See* proposed Rule 201(k) of Regulation Crowdfunding.

[128] *See* proposed Rule 201(g) of Regulation Crowdfunding. *See also* Section 4A(a)(7) (requiring intermediaries to ''ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount . . . .'') and discussion in Section II.C.6 below.

[129] *See* proposed Rule 201*(l)* of Regulation Crowdfunding. *See also* Sections II.C.5 and II.C.6 below for a discussion of information that issuers would be required to provide to investors.

[130] *See* proposed Rule 201(m) of Regulation Crowdfunding.

whether or not such securities have voting rights, any limitations on such voting rights and a description of the restrictions on the transfer of the securities.[131] Although Section 4A(b)(1)(H) does not specifically call for this disclosure, we believe that such disclosure would be necessary to provide investors with a more complete picture of the issuer's capital structure than would be obtained solely pursuant to the statutory requirements. We believe this would help investors better evaluate the terms of the offer before making an investment decision.

Request for Comment

37. Are these proposed disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements? Should we require any additional disclosures? Please explain.

(g) Additional Disclosure Requirements

In addition to the statutory disclosure requirements,[132] we propose to require:

- Disclosure of the name, Commission file number and Central Registration Depository number (''CRD number'') [133] (as applicable) of the intermediary through which the offering is being conducted; [134]
- disclosure of the amount of compensation paid to the intermediary for conducting the offering, including the amount of any referral or other fees associated with the offering; [135]
- disclosure of certain legends to be included in the offering statement; [136]
- disclosure of the current number of employees of the issuer; [137]
- a discussion of the material factors that make an investment in the issuer speculative or risky; [138]
- a description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date and any other material terms; [139]
- disclosure of exempt offerings conducted within the past three years; [140] and
- disclosure of certain related-party transactions.[141]

Requiring an issuer to identify the name, Commission file number and CRD number (as applicable) of the intermediary through which the offering is being conducted should assist investors and regulators in obtaining information about the offering and facilitate monitoring the use of the exemption. It also could help investors obtain background information on the intermediary, for instance through filings made by the intermediary with the Commission as well as through the Financial Industry Regulatory Authority's (''FINRA'') BrokerCheck system for brokers [142] or a similar system, if created, for funding portals.

In addition, requiring an issuer to disclose the amount of compensation paid to the intermediary for conducting the offering, including the amount of referral or other fees associated with the offering, would permit investors and regulators to determine how much of the proceeds of the offering are used to compensate the intermediary and to facilitate the monitoring of compensation paid to intermediaries.

The requirement for an issuer to include in the offering statement certain specified legends about the risks of investing in a crowdfunding transaction is intended to help investors understand the general risks of investing in a crowdfunding transaction. In addition, the requirement that an issuer include in the offering statement certain legends about the required ongoing reports, including how those reports would be made available to investors and how an issuer may terminate its ongoing reporting obligations, is intended to help investors understand an issuer's ongoing reporting obligations and inform investors of how they will be able to access those reports.

The proposed rules also would require disclosure of the material factors that make an investment in the issuer speculative or risky.[143] We believe that this risk factor information should help investors to better understand the risks of investing in a specific issuer's offering.

The proposed rules also would require disclosure of certain related-party transactions between the issuer and any director or officer of the issuer, any person who is a 20 Percent Beneficial Owner, any promoter of the issuer (if the issuer was incorporated or organized within the past three years), or immediate family members of the foregoing persons.[144] For purposes of this related-party transactions disclosure, ''immediate family member'' would have the same meaning that it has in Item 404 of Regulation S–K,[145] which relates to the disclosure of related-party transactions for Exchange Act reporting companies. This related-party transactions disclosure should assist investors in obtaining a more complete picture of the financial relationships between certain related parties and the issuer.

Several commenters suggested that we should model the disclosure form after Securities Act Form 1–A [146] or the North American Securities Administrators Association's (''NASAA'') uniform Small Company Offering Registration Form (U–7).[147] The proposed disclosure requirements regarding risk factors and related-party transactions are similar to those in Form 1–A except that, with respect to the disclosure about related-party transactions, the proposed rules would require disclosure about transactions since the beginning of the issuer's last full fiscal year, rather than the two fiscal years required in Form 1–A. Given the early stage of development of the small businesses and startups that we expect would seek to raise capital pursuant to Section 4(a)(6), as well as the investment limitations prescribed by the proposed rules, we believe that limiting the disclosure to related-party transactions since the beginning of the issuer's last full fiscal year will reduce the burden on issuers while still providing investors with sufficient information to evaluate the relationship between related parties and the issuer. Also, the proposed rules only would require disclosure of related-party transactions in excess of five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6) during the preceding 12-month period, inclusive of the amount the issuer seeks to raise in the current offering under Section 4(a)(6). For

[131] *See* proposed Rule 501 of Regulation Crowdfunding and Section II.E.2 below for a discussion of restrictions on resales.

[132] Section 4A(b)(1)(I) provides us with discretion to require crowdfunding issuers to provide additional information for the protection of investors and in the public interest.

[133] The Financial Industry Regulatory Authority, Inc. (''FINRA'') will issue the CRD number.

[134] *See* proposed Rule 201(n) of Regulation Crowdfunding.

[135] *See* proposed Rule 201(o) of Regulation Crowdfunding.

[136] *See* Item 2 of General Instruction III to proposed Form C.

[137] *See* proposed Rule 201(e) of Regulation Crowdfunding.

[138] *See* proposed Rule 201(f) of Regulation Crowdfunding.

[139] *See* proposed Rule 201(p) of Regulation Crowdfunding.

[140] *See* proposed Rule 201(q) of Regulation Crowdfunding.

[141] *See* proposed Rule 201(r) of Regulation Crowdfunding.

[142] *See* FINRA, FINRA BrokerCheck, *available at http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P015175*.

[143] *See* proposed Rule 201(f) of Regulation Crowdfunding.

[144] *See* proposed Rule 201(r) of Regulation Crowdfunding.

[145] 17 CFR 229.404. *See* proposed Rule 201(r)(4) of Regulation Crowdfunding.

[146] 17 CFR 239.90. Form 1–A is the form used for securities offerings made pursuant to Regulation A.

[147] *See* Commonwealth of Massachusetts Letter; Coan Letter; Liles Letter 1; Vim Funding Letter; NASAA Letter.

example, an issuer seeking to raise $1 million would be required to disclose related-party transactions in excess of $50,000, which is the same threshold required in Form 1–A. We believe that, in light of the sizes and varieties of issuers that may make offerings in reliance on Section 4(a)(6), this scaled approach is more appropriate than the fixed amount approach used in Form 1–A, which might be disproportionate to the size of certain offerings and issuers.

Two commenters suggested that the Commission require the issuer to disclose the total number of employees.[148] The proposed rules would require disclosure of the issuer's current number of employees.[149] This information should assist investors and regulators in obtaining information about the size of the businesses using the exemption. This information would make data available that could be used to evaluate whether the businesses using the exemption are creating additional jobs.[150]

The proposed rules also would require disclosure of the material terms of any indebtedness of the issuer, including, among other items, the amount, interest rate and maturity date.[151] We believe this information would be important to investors because servicing debt could place additional pressures on an issuer in the early stages of development.

In addition, the proposed rules would require disclosure of exempt offerings conducted within the past three years.[152] For each exempt offering within the past three years, the proposed rules would require a description of the date of the offering, the offering exemption relied upon, the type of securities offered and the amount of securities sold and the use of proceeds.[153] We believe that it would be important to investors to know of prior offerings of securities. This information would better inform investors about the capital structure of the issuer and would provide information about how prior offerings were valued.

Request for Comment

38. Are these proposed disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements? If so, how and why?

39. To assist investors and regulators in obtaining information about the offering and to facilitate monitoring the use of the exemption, the proposed rules would require an issuer to identify the name, Commission file number and CRD number (as applicable) of the intermediary through which the offering is being conducted. Is there a better approach? What other information should be provided? If so, please describe it.

40. Should we require disclosure of the amount of compensation paid to the intermediary, as proposed? Why or why not? Should we require issuers to separately disclose the amounts paid for conducting the offering and the amounts paid for other services? Why or why not?

41. Should we require the issuer to include certain specified legends about the risks of investing in a crowdfunding transaction and disclosure of the material factors that make an investment in the issuer speculative or risky, as proposed? Why or why not? Should we provide examples in our rules of the types of material risk factors an issuer should consider disclosing? Why or why not? If so, what should those examples be?

42. Should we require disclosure of certain related-party transactions, as proposed? Why or why not? The proposed rules would require disclosures of certain transactions between the issuer and directors or officers of the issuer, 20 Percent Beneficial Owners, any promoter of the issuer, or relatives of the foregoing persons. Is this the appropriate group of persons? Should we limit or expand the list of persons? If so, how and why?

43. As proposed, immediate family member, for purposes of related-party transactions disclosure, would have the same meaning that it has in Item 404 of Regulation S–K.[154] Is this the appropriate approach? Why or why not? If not, what would be a more appropriate definition and why? For purposes of restrictions on resales of securities issued in transactions made in reliance on Section 4(a)(6), ''member of the family of the purchaser or the equivalent'' would, as proposed, expressly include spousal equivalents.[155] Should the definition of immediate family member for purposes of related-party transactions disclosure also expressly include spousal equivalents, or would including spousal equivalents create confusion in light of the fact that the definition for purposes of related-party transactions already includes any persons (other than a tenant or employee) sharing the same household? Please explain.

44. Is it appropriate to limit the disclosure about related-party transactions to transactions since the beginning of the issuer's last full fiscal year? Why or why not? Is it appropriate to limit disclosure to those related-party transactions that exceed five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6)? Should we instead require disclosure of all related-party transactions or all transactions in excess of an absolute threshold amount?

45. Is it appropriate to require a description of any prior exempt offerings conducted within the past three years, as proposed? Why or why not? Would another time period (*e.g.,* one year, five years, etc.) or no time limit be more appropriate?

46. Should we require any additional disclosures (*e.g.,* should we require disclosure about executive compensation and, if so, what level of detail should be required in such disclosure)? If so, what disclosures and why?

ii. Financial Disclosure

Section 4A(b)(1)(D) requires ''a description of the financial condition of the issuer.'' It also establishes a framework of tiered financial disclosure requirements based on aggregate target offering amounts of the offering and all other offerings made in reliance on Section 4(a)(6) within the preceding 12-month period:

- issuers offering $100,000 or less are required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors income tax returns filed by the issuer for the most recently completed year (if any) and financial statements that are certified by the principal executive officer to be true and complete in all material respects;
- issuers offering more than $100,000, but not more than $500,000, are required to file with the Commission, provide to investors and the relevant intermediary and make available to

[148] *See* NASAA Letter; Ohio Division of Securities Letter.

[149] *See* proposed Rule 201(e) of Regulation Crowdfunding.

[150] Issuers would be required to disclose the current number of employees in the offering document and the ongoing reports, which should permit comparison of the number of employees over different time periods.

[151] *See* proposed Rule 201(p) of Regulation Crowdfunding.

[152] *See* proposed Rule 201(q) Regulation Crowdfunding.

[153] *See* proposed Instruction to paragraph (q) of proposed Rule 201 of Regulation Crowdfunding.

[154] 17 CFR 229.404. *See* proposed Rule 201(r)(4) of Regulation Crowdfunding.

[155] *See* proposed Rule 501(c) of Regulation Crowdfunding and the related instruction thereto. *See also* Section II.E.2 below for a discussion of spousal equivalent.

potential investors financial statements reviewed by a public accountant that is independent of the issuer; and

• issuers offering more than $500,000 (or such other amount as the Commission may establish) are required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors audited financial statements.

Section 4A(h) further provides that these dollar amounts shall be adjusted by the Commission not less frequently than once every five years, by notice published in the **Federal Register**, to reflect any change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(a) Financial Condition Discussion

Consistent with Section 4A(b)(1)(D), the proposed rules would require an issuer to provide a narrative discussion of its financial condition.[156] This discussion should address, to the extent material, the issuer's historical results of operations in addition to its liquidity and capital resources. If an issuer does not have a prior operating history, the discussion should focus on financial milestones and operational, liquidity and other challenges. If an issuer has a prior operating history, the discussion should focus on whether historical earnings and cash flows are representative of what investors should expect in the future. An issuer's discussion of its financial condition should take into account the proceeds of the offering and any other known or pending sources of capital. Issuers also should discuss how the proceeds from the offering will affect their liquidity and whether these funds and any other additional funds are necessary to the viability of the business. In addition, issuers should describe the other available sources of capital to the business, such as lines of credit or required contributions by principal shareholders.

We expect that the discussion required by the proposed rule and instruction would inform investors about the financial condition of the issuer in a manner similar to the management's discussion and analysis of financial condition and results of operations (''MD&A'') required by Item 303 of Regulation S–K [157] for registered offerings. Because issuers seeking to engage in crowdfunding transactions would likely be smaller, less complex and at an early stage of development compared to issuers conducting registered offerings or Exchange Act reporting companies, we expect that the discussion would not generally need to be as lengthy or detailed as the MD&A of Exchange Act reporting companies. We are not proposing to prescribe content or format for this information, but rather to set forth principles of disclosure. To the extent these items of disclosure overlap with the issuer's discussion of its business or business plan, issuers are not required to make duplicate disclosures. While we are not proposing to mandate a specific presentation, we expect issuers to present the required disclosures, including any other information that would be material to an investor, in a clear and understandable manner.

Request for Comment

47. Are these proposed requirements for the discussion of the financial condition of the issuer appropriate? Why or why not? Should we modify or eliminate any of the requirements in the proposed rule or instruction? If so, which ones and why? Should we require any additional disclosures? If so, what disclosures and why? Should we prescribe a specific format or presentation for the disclosure? Please explain.

48. Should we exempt issuers with no operating history from the requirement to provide a discussion of their financial condition? If so, why? Should we require such issuers to specifically state that they do not have an operating history, as proposed? Why or why not?

49. In the discussion of the issuer's financial condition, should we require issuers to provide specific disclosure about prior capital raising transactions? Why or why not? Should we require specific disclosure relating to prior transactions made pursuant to Section 4(a)(6), including crowdfunding transactions in which the target amount was not reached? Why or why not?

(b) Financial Disclosures

As noted above, Section 4A(b)(1)(D) establishes tiered financial statement disclosure requirements that are based on aggregate target offering amounts within the preceding 12-month period. We received a range of comments on this requirement.

In response to the requirement for issuers offering $100,000 or less to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors their income tax returns for the most recently completed year, one commenter suggested that, even if redacted, income tax returns should not be made public.[158] One commenter suggested that financial statements should cover the most recently completed fiscal year.[159] Other commenters suggested that issuers offering $100,000 or less should provide financial statements prepared in accordance with generally accepted accounting principles (''GAAP''), including explanatory notes, even though those financial statements would not be subject to an independent accountant's review or audit.[160]

For issuers offering more than $100,000, but not more than $500,000, one commenter suggested that the Commission require the financial statement review to be done by accountants in good standing for at least five years.[161] Another commenter stated that issuers in existence for less than 12 months should not be required to provide independently reviewed financial statements.[162]

Several commenters objected to the requirement for issuers to provide audited financial statements when offering more than $500,000 and suggested alternatives.[163] One

[156] *See* proposed Rule 201(s) of Regulation Crowdfunding.

[157] 17 CFR 229.303.

[158] *See* RocketHub Letter 1 (stating that information can be taken from the issuer's tax return and entered digitally, by the issuer, for inclusion in the offering materials).

[159] *See* CompTIA Letter.

[160] *See* Commonwealth of Massachusetts Letter; NASAA Letter.

[161] *See* Philipose Letter 1.

[162] *See* CFIRA Letter 2.

[163] *See* CFIRA Letter 2 (stating that the requirement to provide audited financial statements should apply solely to issuers that have been engaged in their current business for more than 12 months and which are seeking to raise at least $1,000,000); Vim Funding Letter (stating that the statute gives the Commission the discretion to raise the threshold at which audits are required, ''in theory all the way up to the $1,000,000 level'' and asking that the Commission exercise its discretion); RocketHub Letter 1 (stating that the threshold for the audit requirement should be raised to an amount in excess of $1,000,000 and audited financial statements should only be required for issuers that have been in operation for more than two years); Parker Letter (stating that the audit requirement is an unnecessary expense); Cera Technology Letter (stating that the audit requirement should be raised to $1,000,000); ABA Letter 1 (stating that the Commission should consider a higher threshold, such as $750,000, or identify additional criteria, such as revenue levels, that would require audited financial statements); Loofbourrow Letter (stating that the Commission should not impose an audit requirement); InitialCrowdOffering Letter (stating that the requirement for audited financial statements should be eliminated); Genedyne Letter 1 (stating that the Commission should not impose an audit requirement for offerings under $1,000,000); BrainThrob Laboratories Letter (stating that the Commission should defer imposing an audit requirement until further study can determine whether it is economically beneficial to the investment community); Vogele Letter (stating that obtaining audited financial statements takes time and new businesses do not have a lot of time). *See also* 2012 SEC Government-Business Forum, note

commenter suggested that an issuer should not be required to provide audited financial statements if: (1) The target offering amount is not greater than $100,000 (notwithstanding any other transactions made in reliance on Section 4(a)(6) within the preceding 12-month period); and (2) the issuer has not conducted a transaction in reliance on Section 4(a)(6) within the preceding six months.[164] Another commenter suggested that issuers should be required to identify the accountant used to certify or audit the financial statements.[165]

Under the proposed rules, in determining the financial statements that would be required, an issuer would need to aggregate the amounts offered and sold in reliance on Section 4(a)(6) within the preceding 12-month period with the target offering amount (or the maximum offering amount, including the aggregate amount of any possible oversubscriptions if the issuer will accept oversubscriptions) of the offering for which disclosure is being provided.[166] The statute refers to aggregate ''offering amounts'' within the preceding 12-month period. We are proposing to require issuers to aggregate only amounts offered and sold (rather than all offered amounts, including those not sold) within the preceding 12-month period with the amount the issuer is seeking to raise in the transaction.[167] We do not believe that this provision should require an issuer to aggregate amounts offered in prior offerings but not sold (for example, because the target offering amount was not met). Otherwise, an issuer that initially sought to raise $400,000, did not complete the crowdfunding transaction because the target offering amount was not met, and would like to raise $200,000 in a second attempt would be required to provide audited financial statements rather than financial statements reviewed by a public accountant in connection with that $200,000 offering. We believe that this result would increase costs to issuers when those issuers were unsuccessful in prior offerings within the preceding 12-month period. Requiring issuers to aggregate amounts offered and sold should still prevent issuers from circumventing the framework of tiered financial disclosure requirements by structuring a larger offering as a series of smaller offerings.[168] We do not propose to prohibit issuers from providing financial statements that meet the requirements for a higher aggregate target offering amount than the proposed rules would require.[169]

The proposed rules would require all issuers to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors a complete set of their financial statements (a balance sheet, income statement, statement of cash flows and statement of changes in owners' equity), prepared in accordance with U.S. generally accepted accounting principles (''U.S. GAAP''), covering the shorter of the two most recently completed fiscal years or the period since inception of the business.[170] In proposing this requirement we considered commenters' suggestions that we require financial statements prepared in accordance with U.S. GAAP,[171] as well as the fact that the same requirement applies to offerings under Regulation A.[172]

We considered proposing to require financial statements covering only the most recently completed fiscal year, as one commenter suggested,[173] rather than the two most recently completed fiscal years; however, we believe that requiring a second year will provide investors with a basis for comparison against the most recently completed period, without substantially increasing the burden for the issuer.[174] We also considered proposing to require a third year of financial statements, but we are concerned that this could be overly burdensome for the types of issuers that likely would engage in crowdfunding transactions.[175]

During the first 120 days of the issuer's fiscal year, an issuer would be able to conduct an offering in reliance on Section 4(a)(6) and the related rules using financial statements for the fiscal year prior to the most recently completed fiscal year if the financial statements for the most recently completed fiscal year are not otherwise available or required to be filed.[176] We believe this accommodation is needed because otherwise issuers would not be able to conduct offerings in reliance on Section 4(a)(6) for a period of time between the end of their fiscal year and the date when the financial statements for that period are available.[177] The issuer could not do this, however, if it was otherwise required to provide updated financial statements by the ongoing reporting requirements [178] or financial statements are otherwise available.[179] For example, if an issuer that has a calendar fiscal year end conducts an offering in April 2014, it would be permitted to include financial statements for the fiscal year ended December 31, 2012 if the financial statements for the fiscal year ended

29 (recommending that the Commission consider raising the offering amount at which audited financial statements are required).

[164] *See* ABA Letter 1.

[165] *See* RocketHub Letter 1 (stating that disclosure of the identity of the accountant used to review or audit the financial statements would allow investors to conduct diligence on the accountant and permit the intermediary to track accountant activities and block issuers on their platform from using accountants who produce poor quality or fraudulent work).

[166] *See* proposed Instruction 1 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[167] *See also* Hutchens Letter (suggesting that the Commission ''devise a rule that creates a relationship between the amount of capital actually raised by an issuer in a crowdfunding offering and the degree of financial disclosure the issuer must provide'').

[168] For example, we believe aggregating completed offerings within the preceding 12-month period is necessary to avoid having an issuer who seeks to raise more than $500,000, which requires audited financial statements, structure the offering as a series of smaller offerings to circumvent this requirement.

[169] *See* proposed Instruction 10 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[170] *See* proposed Instruction 2 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding. Financial statements prepared in accordance with U.S. GAAP are generally self-scaling to the size and complexity of the issuer, which should reduce the burden of preparing financial statements for many issuers.

[171] *See* Commonwealth of Massachusetts Letter; NASAA Letter.

[172] *See* Part F/S of Form 1–A. [17 CFR 239.90].

[173] *See* CompTIA Letter.

[174] *See Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007) [73 FR 934 (Jan. 4, 2008)] (in the context of requiring two years, rather than just one year, of audited balance sheet data for smaller reporting companies, the Commission noted that comparative balance sheets will provide a much more meaningful presentation for investors without a significant additional burden on smaller reporting companies, since the earlier year data should be readily available for the purposes of preparing the other financial statements). *See also SEC Advisory Committee on Smaller Public Companies, Final Report* (Apr. 23, 2006), *available at http://www.sec.gov/info/smallbus/acspc.shtml.*

[175] Requiring a third year of financial statements also would place a greater burden on issuers relying on Section 4(a)(6) than on emerging growth companies conducting registered offerings. *See* Section 102(b) of the JOBS Act.

[176] *See* proposed Instruction 8 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[177] Issuers conducting a registered offering after the end of their fiscal year also are permitted to use financial statements for their prior period until the 90th day after their fiscal-year end for non-accelerated filers (or 75th day for accelerated filers and 60th day for large accelerated filers) if certain conditions are satisfied. *See* Rule 3–01(c) of Regulation S–X [17 CFR 210.3–01(c)].

[178] *See* Section II.B.2 below for a discussion of ongoing reporting requirements.

[179] Additionally, if the offering period remains open beyond 120 days after the end of the issuer's fiscal year (resulting in financial statements older than 485 days at the time the offering closes), then the issuer would be required to update the disclosure in the offering statement to include financial statements for the most recently completed fiscal year. *See* proposed Instruction 8 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

December 31, 2013 are not yet available. Once more than 120 days have passed since the end of the issuer's most recent fiscal year, the issuer would be required to include financial statements for its most recent fiscal year.[180] Regardless of the age of the financial statements, an issuer would be required to include a discussion of any material changes in the financial condition of the issuer during any time period subsequent to the period for which financial statements are provided, including changes in reported revenue or net income, to inform investors of changes to the financial condition of the issuer.[181]

Section 4A(b)(1)(D)(i) requires issuers to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors income tax returns and financial statements. As specified in the statute, we are proposing to require an issuer that is conducting an offering of $100,000 or less in reliance on Section 4(a)(6) to provide its filed income tax returns for the most recently completed fiscal year, if any, and its financial statements certified by its principal executive officer.[182] Although one commenter suggested the Commission should provide otherwise,[183] the statute specifically calls for the Commission to require the filing of income tax returns. To address the privacy concerns raised by commenters with regard to the requirement to provide tax returns, we are proposing to require issuers to redact personally identifiable information, such as social security numbers, from their tax returns before filing. Issuers that offer securities in reliance on Section 4(a)(6) before filing their tax returns for the most recently completed fiscal year would be allowed to use the tax return filed for the prior year, provided that the issuer discloses any material changes since that prior year. In addition, the issuer would be required to provide the tax return for the most recent fiscal year when filed with the U.S. Internal Revenue Service (if filed during the offering period). With regard to the requirement to provide financial statements that are certified to be true and complete in all material respects, we are proposing a form of the certification that would be provided by the issuer's principal executive officer.[184]

For offerings of more than $100,000, but not more than $500,000, Section 4A(b)(1)(D)(ii) requires issuers to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements reviewed by a public accountant who is ''independent'' of the issuer, using professional standards and procedures or standards and procedures established by the Commission for this purpose. The statute does not define the term ''independent.'' We propose that to qualify as an independent public accountant for purposes of this requirement, the accountant would need to comply with the Commission's independence rules, which are set forth in Rule 2–01 of Regulation S–X.[185] We believe that accounting professionals could benefit from the guidance the Commission and staff have provided about these independence rules. We also believe that financial statement reviews under these standards could provide investors with more confidence regarding the reliability of the financial statements.[186] An issuer subject to this requirement that seeks to eventually become an Exchange Act reporting company may have an easier transition because the issuer would already be complying with our independence rules.[187]

The statute also gives the Commission discretion to determine the professional standards and procedures used for the review of the financial statements. To implement this requirement, the proposed rules would require issuers to provide financial statements reviewed in accordance with the Statements on Standards for Accounting and Review Services (''SSARS'') issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants (''AICPA'').[188] We are not proposing new review standards for purposes of these rules at this time because we do not believe it is necessary. The AICPA's review standard is widely utilized, and we are not aware of any other widely utilized standards for reviews. Many accountants reviewing financial statements of crowdfunding issuers should be familiar with the AICPA's standards and procedures for review, which could make it less burdensome for issuers.

The issuer would be required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors a copy of the public accountant's review report.[189] This should benefit investors by giving them the ability to consider any modification that may have been made to the review report. It also would serve as a way to identify the accounting firm used to review the financial statements. As one commenter suggested,[190] investors then could conduct due diligence on the accounting firm by, for example, researching the other offerings made in reliance on Section 4(a)(6) in which the accounting firm was involved or reviewing the accounting firm's licensure status and any publicly-available disciplinary proceedings.

For offerings of more than $500,000, consistent with the threshold identified in Section 4A(b)(1)(D)(iii), the proposed rules would require issuers to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors audited financial statements. While Congress authorized the Commission to establish a different threshold, we are not proposing at this time to raise the threshold at which an issuer would be required to provide audited financial statements, as some commenters suggested.[191] We note that Congress specifically selected $500,000 as the threshold at which to require audited

[180] *Id.*

[181] *See* proposed Instruction 9 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[182] *See* proposed Rule 201(t)(1) of Regulation Crowdfunding.

[183] *See* RocketHub Letter 1.

[184] *See* proposed Instruction 4 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[185] 17 CFR 210.2–01. Rule 2–01 of Regulation S–X is designed to ensure that auditors are qualified and independent both in fact and in appearance. The rule sets forth restrictions on, including but not limited to, financial, employment, and business relationships between an accountant and a client and restrictions on an accountant providing certain non-audit services to a client. The general standard of independence is set forth in Rule 2–01(b). The rule does not purport to, and the Commission could not, consider all the circumstances that raise independence concerns, and these are subject to the general standard in paragraph (b) of Rule 2–01. In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service: (a) Creates a mutual or conflicting interest between the accountant and the client; (b) places the accountant in the position of auditing his or her own work; (c) results in the accountant acting as management or an employee of the client; or (d) places the accountant in a position of being an advocate for the client.

[186] For example, under the Commission's independence rules, an auditor cannot provide bookkeeping services to an audit client, so investors would be able to rely on the benefits that accompany the prohibition against an auditor auditing its own work. *See* Rule 2–01(c)(4) of Regulation S–X [17 CFR 210.2–01(c)(4)].

[187] Using an accountant that is not independent in accordance with our independence rules could result in increased expense and delay to the extent that an issuer seeking to become an Exchange Act reporting company would need to obtain an audit of the financial statements by an accountant complying with the Commission's independence standards.

[188] *See* proposed Rule 201(t)(2) of Regulation Crowdfunding.

[189] *See* proposed Instruction 5 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[190] *See* RocketHub Letter 1.

[191] *See* CFIRA Letter 2; Vim Funding Letter; RocketHub Letter 1; Cera Technology Letter; Genedyne Letter 1; Schwartz Letter.

financial statements. If we were to raise the threshold to $1 million, as suggested by some commenters,[192] it would eliminate the requirement for issuers ever to provide audited financial statements because the maximum offering amount under Section 4(a)(6) is $1 million. Leaving the $500,000 threshold unchanged also would provide the Commission, investors and issuers an opportunity to become familiar with the new offering exemption before considering possible changes to the threshold.

Under the proposed rules, the auditor conducting the audit of the financial statements would be required to be independent of the issuer and the audit would have to be conducted in accordance with the auditing standards issued by either the AICPA or the Public Company Accounting Oversight Board (''PCAOB'').[193] The proposed instructions to the rules would provide that the auditor would be required to be independent of the issuer based on the Commission's independence standard in Rule 2–01 of Regulation S–X.[194] Providing issuers with a choice of auditing standards could provide a benefit in a number of ways. If an issuer currently has audited financial statements using one of the specified standards, the issuer would not need to obtain a new audit or engage a different auditor to conduct an audit in order to engage in a crowdfunding transaction in reliance on Section 4(a)(6). If an issuer chooses to have an audit conducted in accordance with PCAOB auditing standards, it generally would not need to obtain a new audit in order to file a registration statement with the Commission for a registered offering or to register a class of securities under the Exchange Act and become an Exchange Act reporting company. The proposed rules would not require the audit to be conducted by a PCAOB-registered firm. This should mean that a greater number of accountants would be eligible to audit the issuers' financial statements, which may reduce issuers' costs.

An issuer would be required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors a copy of the audit report.[195] This should benefit investors by serving as a way to identify the accounting firm used to audit the financial statements. Investors then could conduct due diligence by, for example, researching other offerings made in reliance on Section 4(a)(6) in which the accounting firm was involved or reviewing the accounting firm's licensure status and any publicly-available disciplinary proceedings.

An issuer that received an unqualified or a qualified audit opinion would be in compliance with the audited financial statement requirements.[196] An issuer that received an adverse opinion or a disclaimer of opinion, however, would not be in compliance with the audited financial statement requirements,[197] because the auditor determined that the financial statements of the issuer do not present fairly its financial position, results of operations or cash flows in conformity with U.S. GAAP, or that the auditor does not express an opinion on the financial statements.

Under Rule 2–01 of Regulation S–X, the Commission does not recognize as a public accountant any person who: (1) Is not duly registered and in good standing as a certified public accountant under the laws of the place of his residence or principal office; or (2) is not in good standing and entitled to practice as a public accountant under the laws of the place of his residence or principal office.[198] We believe that this rule promotes the use of qualified accountants that are in compliance with the requirements for their profession for the review or audit of the financial statements with respect to all offerings, including offerings in reliance on Section 4(a)(6).[199] We are not proposing to require that the public accountant be in good standing for at least five years, as one commenter suggested,[200] because that could unnecessarily restrict the pool of available public accountants by, for example, excluding accountants who are in good standing but who have been in business for fewer than five years.

We believe that many issuers engaging in crowdfunding transactions in reliance on Section 4(a)(6) are likely to be at a very early stage of their business development and may not have an operating history. In many instances, these issuers will have no more than a business plan for which they are seeking investors to help fund. We are not proposing to exempt these issuers (or issuers that have been in existence for less than 12 months, as one commenter suggested) [201] from the requirement to provide financial statements based on the tiered offering amounts. Financial statements prepared in accordance with U.S. GAAP are generally self-scaling to the size and complexity of the issuer, which reduces the burden of preparing financial statements for many early stage issuers. We would not expect that the required financial statements would be long or complicated for issuers that are recently formed and have limited operating histories. We preliminarily believe, nevertheless, that financial statements for such issuers would be useful for investors, particularly when presented along with a description of the issuer's financial condition. This would give investors a more complete picture of the issuer and would highlight its early stage of development.

Request for Comment

50. Under the statute and the proposed rules, issuers are required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements. The proposed rules would require all issuers to provide a complete set of financial statements (a balance sheet, income statement, statement of cash flows and statement of changes in owner's equity) prepared in accordance with U.S. GAAP. Should we define financial statements differently than under U.S. GAAP? If so, what changes would be appropriate and why? What costs or challenges would be associated with the use of a model other than U.S. GAAP (*e.g.,* lack of comparability)? What would be the benefits? Please explain.

51. Should we exempt issuers with no operating history or issuers that have been in existence for fewer than 12 months from the requirement to provide financial statements, as one commenter suggested? [202] Why or why not? Specifically, what difficulties would issuers with no operating history or issuers that have been in existence for fewer than 12 months have in providing financial statements? Please explain.

52. If we were to exempt issuers with little or no operating history from the requirement to provide financial statements, should we require

[192] *See* CFIRA Letter 2; Vim Funding Letter; Cera Technology Letter; Genedyne Letter 1.

[193] *See* proposed Rule 201(t)(3) of Regulation Crowdfunding.

[194] 17 CFR 210.2–01.

[195] *See* proposed Instruction 6 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[196] *Id.*

[197] *Id.*

[198] *See* 17 CFR 210.2–01(a).

[199] Accountants also would be subject to Rule 102(e) of the Rules of Practice and Investigations. *See* 17 CFR 201.102(e). Under Rule 102(e), the Commission can censure, suspend or bar professionals who appear or practice before it if it finds such professionals, after notice and an opportunity for hearing: (1) Not to possess the requisite qualifications to represent others; or (2) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder. *See* 17 CFR 201.102(e)(1)(i), (ii) and (iii).

[200] *See* Philipose Letter 1.

[201] *See* CFIRA Letter 2.

[202] *Id.*

additional discussion of the fact that the issuer does not have an operating history? If so, what additional discussion should we require?

53. Section 4A(b)(1)(D) establishes tiered financial statement requirements based on aggregate target offering amounts within the preceding 12-month period. Under the proposed rules, issuers would not be prohibited from *voluntarily* providing financial statements that meet the requirements for a higher aggregate target offering amount (*e.g.,* an issuer seeking to raise $80,000 provides financial statements reviewed by a public accountant who is independent of the issuer, rather than the required income tax returns and a certification by the principal executive officer). Is this approach appropriate? Why or why not?

54. Should we allow issuers to prepare financial statements using a comprehensive basis of accounting other than U.S. GAAP? For example, should issuers be allowed to provide financial statements prepared on an income tax basis, a cash basis or a modified cash basis of accounting? Why or why not? If so, should we allow all issuers to use a comprehensive basis of accounting other than U.S. GAAP, or only issuers seeking to raise $100,000 or less, or $500,000 or less? Why or why not?

55. Should we require issuers to provide two years of financial statements, as proposed? Should this time period be one year, as one commenter suggested,[203] or three years? Please explain.

56. Should we require some or all issuers also to provide financial statements for interim periods, such as quarterly or semi-annually? Why or why not? If so, which issuers and why? Should we require these financial statements to be subject to public accountant or auditor involvement? If so, what level of involvement is appropriate?

57. As proposed, subject to certain conditions, issuers would be able to conduct an offering during the first 120 days of the issuer's fiscal year if the financial statements for the most recently completed fiscal year are not yet available. For example, an issuer could raise capital in April 2014 by providing financial statements from December 2012, instead of a more recent period. Is this an appropriate approach? If the issuer is a high growth company subject to significant change, would this approach result in financial statements that are too stale? Should the period be shorter or longer (*e.g.,* 90 days, 150 days, etc.)? What quantitative and qualitative factors should we consider in setting the period? Should issuers be required to describe any material changes in their financial condition for any period subsequent to the period for which financial statements are provided, as proposed? Please explain if you do not believe this description should be required.

58. The proposed rules would require issuers offering $100,000 or less to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects. Should we require issuers offering more than $100,000, but not more than $500,000, and/or issuers offering more than $500,000 to provide financial statements that are certified by the principal executive officer to be true and complete in all material respects? Why or why not?

59. Have we adequately addressed the privacy concerns raised by the requirement to provide income tax returns? Should we require issuers to redact personally identifiable information from any tax returns, as proposed? Is there additional information that issuers should be required or allowed to redact? In responding, please specify each item of information that issuers should be required or allowed to redact and why. Under the statute and proposed rules, an issuer must be a business organization, rather than an individual. Does this requirement alleviate some of the potential privacy concerns? Please explain.

60. If an issuer has not yet filed its tax return for the most recently completed fiscal year, should we allow the issuer to use the tax return filed for the prior year and require the issuer to update the information after filing the tax return for the most recently completed fiscal year, as proposed? Should the same apply to an issuer that has not yet filed its tax return for the most recently completed fiscal year and has requested an extension of the time to file? Should issuers be required, as proposed, to describe any material changes that are expected in the tax returns for the most recently completed fiscal year? Please explain.

61. As proposed, the accountant reviewing or auditing the financial statements would have to be independent, as set forth in Rule 2–01 of Regulation S–X. Should we require compliance with the independence standards of the AICPA instead? Why or why not? If so, similar to the requirement in Rule 2–01 of Regulation S–X, should we also require an accountant to be: (1) Duly registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office; or (2) in good standing and entitled to practice as a public accountant under the laws of his or her place of residence or principal office? Is there another independence standard that would be appropriate? If so, please identify the standard and explain why. Alternatively, should we create a new independence standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard? Please explain.

62. As proposed, the accountant reviewing or auditing the financial statements must be independent based on the independence standard in Rule 2–01 of Regulation S–X. Are there any requirements under Rule 2–01 that should not apply to the accountant reviewing or auditing the financial statements that are filed pursuant to the proposed rules? Why or why not? Are there any that would not apply, but should? For example, should the accountant reviewing or auditing the financial statements of issuers in transactions made in reliance on Section 4(a)(6) be subject to the partner rotation requirements of Rule 2–01(c)(6)? Why or why not?

63. As proposed, an issuer with a target offering amount greater than $100,000, but not more than $500,000, would be required to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements reviewed by an independent public accountant in accordance with the review standards issued by the AICPA. Is this standard appropriate, or should we use a different standard? Why or why not? If so, what standard and why? Alternatively, should we create a new review standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard and why would it be more appropriate than the one proposed? What costs would be involved for companies and accountants in complying with a new review standard? How should the Commission administer and enforce a different standard?

64. Section 4A(b)(1)(D)(iii) requires audited financial statements for offerings of more than $500,000 ''or such other amount as the Commission may establish, by rule.'' Should we increase the offering amount for which audited financial statements would be required? If so, to what amount (*e.g.,* $600,000, $750,000, etc.)? Please provide a basis for any amount suggested. Should we identify additional criteria other than the offering amount, as one commenter

[203] *See* CompTIA Letter.

suggested,[204] that could be used to determine when to require an issuer to provide audited financial statements? If so, what should those criteria be?

65. Should financial statements be required to be dated within 120 days of the start of the offering? If so, what standard should apply? Should those financial statements be reviewed or audited? Why or why not?

66. Under Rule 502(b)(2)(B)(1)–(2) of Regulation D, if an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet must be audited. Should we include a similar provision in the proposed rules? Why or why not? Should we provide any guidance as to what would constitute unreasonable effort or expense in this context? If so, please describe what should be considered to be an unreasonable effort or expense. If we were to require an issuer's balance sheet to be dated within 120 days of the start of the offering, should we allow the balance sheet to be unaudited? Why or why not?

67. As proposed, an issuer with a target offering amount greater than $500,000 could select between the auditing standards issued by the AICPA or the PCAOB. Should we instead mandate one of the two standards? If so, which standard and why? Alternatively, should we create a new audit standard for purposes of Section 4(a)(6)? If so, what would be an appropriate standard? What costs would be involved for companies and auditors in complying with a new audit standard?

68. Should we require that all audits be conducted by PCAOB-registered firms? Why or why not?

69. Should we consider the requirement to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors financial statements subject to a review to be satisfied if the review report includes modifications? Why or why not? Would your response differ depending on the nature of the modification? Please explain.

70. As proposed, an issuer receiving an adverse audit opinion or disclaimer of opinion would not satisfy its requirement to file with the Commission, provide to investors and the relevant intermediary and make available to potential investors audited financial statements. Should an issuer receiving a qualified audit opinion be deemed to have satisfied this requirement? Should certain qualifications (*e.g.,* non-compliance with U.S. GAAP) result in the financial statements not satisfying the requirement to provide audited financial statements while other types of qualifications would be acceptable? If so, which qualifications would be acceptable and why?

71. Should we require that the certified public accountant reviewing or auditing the financial statements be in good standing for at least five years, as one commenter suggested? [205] Why or why not? Should we require that the public accountant be in good standing for a lesser period of time? If so, for how long? Would such a requirement restrict the pool of available public accountants? If so, by how much? Would such a requirement reduce investor protections? If so, how?

b. Progress Updates

Consistent with Section 4A(b)(1)(F), the proposed rules would require an issuer to prepare regular updates on its progress in meeting the target offering amount.[206] These updates would be filed with the Commission on EDGAR, under cover of Form C, provided to investors and the relevant intermediary and made available to potential investors. The issuer would check the box for ''Form C–U: Progress Update'' on the cover of the Form C and provide the required update in the space provided. One commenter suggested that issuers should be exempted from issuing status updates and/or reports so long as the funding portal publicly displays the progress of the issuer in meeting the target offering amount.[207]

As proposed, the rules would require an issuer to file with the Commission and provide investors and the relevant intermediary regular updates regarding the issuer's progress in meeting the target offering amount no later than five business days after the issuer reaches particular intervals—*i.e.,* one-half and 100 percent—of the target offering amount.[208] If the issuer will accept proceeds in excess of the target offering amount, the issuer also would be required to file with the Commission and provide investors and the relevant intermediary a final progress update, no later than five business days after the offering deadline, disclosing the total amount of securities sold in the offering.[209] If, however, multiple progress updates are triggered within the same five-business-day period (*e.g.,* the issuer reaches one-half of the target offering amount on November 5 and 100 percent of the target offering amount on November 8), the issuer could consolidate such progress updates into one Form C–U, so long as the Form C–U discloses the most recent threshold that was met and the Form C–U is filed with the Commission and provided to investors and the relevant intermediary by the day on which the first progress update would be due.[210] The proposed rules also would require the intermediary to make these updates available to investors and potential investors through the intermediary's platform.[211]

We believe that this information would be important to investors by allowing them to gauge whether interest in the offer has increased gradually or whether it was concentrated at the beginning or at the end of the offering period. In addition, we believe that the final progress update would be necessary to inform investors of the total amount of securities sold by the issuer, especially in cases where an issuer may have sold more than the target offering amount. The proposed rules do not include an exemption from this requirement when progress updates are provided solely on the intermediary's platform. We believe that proposing to require that the progress updates be filed with the Commission would create a central repository for this information—information that otherwise might no longer be available on the intermediary's platform after the offering terminated. The progress updates filed with the Commission also would make data available that could be used to evaluate the effects of the Section 4(a)(6) exemption on capital formation.

Request for Comment

72. Views about what constitutes a ''regular update'' may vary, particularly when considering the length of the offering. Is the requirement to file an update when the issuer reaches one-half and 100 percent of the target offering amount appropriate? Is the proposed requirement to file a final update in offerings in which the issuer will accept proceeds in excess of the target offering amount appropriate? Why or why not?

[204] *See* ABA Letter 1 (stating that revenue could be a criteria for determining when audited financial statements would be required).

[205] *See* Philipose Letter 1.

[206] *See* proposed Rules 201(v) and 203(a)(3) of Regulation Crowdfunding.

[207] *See* RocketHub Letter 1 (also stating that if the Commission mandates the filing of status updates, it should not mandate a particular form of update).

[208] *See* proposed Rule 203(a)(3) of Regulation Crowdfunding.

[209] *Id.*

[210] *See* proposed Instruction 2 to paragraph (a)(3) of proposed Rule 203 of Regulation Crowdfunding.

[211] *See* proposed Rule 303(a) of Regulation Crowdfunding and Section II.C.5.a below.

Should we require the progress updates to be filed at different intervals (*e.g.,* one-third, two-thirds or some other intervals)? Why or why not? Alternatively, should the progress updates be filed after a certain amount of the offering time has elapsed (*e.g.,* weekly or monthly until the target or maximum is reached or until the offering closes)? Should the progress updates be based on reaching other milestones or on some other basis? If so, what milestones or other basis and why?

73. As proposed, issuers would have five business days from the time they reach the relevant threshold to file a progress update. Is this time period appropriate? Why or why not? If not, what would be an appropriate time period? Please explain. Should issuers be allowed to consolidate multiple progress updates into one Form C–U if multiple progress updates are triggered within a five-business-day period, as proposed? Why or why not?

74. Should issuers be required to certify that they have filed all the required progress updates prior to the close of the offering? Why or why not?

75. Should we exempt issuers from the requirement to file progress updates with the Commission as long as the intermediary publicly displays the progress of the issuer in meeting the target offering amount? Why or why not? If so, should the Commission establish standards about how prominent the display would need to be?

c. Amendments to the Offering Statement

We are proposing to require that an issuer amend its disclosure for any material change in the offer terms or disclosure previously provided to investors. The amended disclosure would be filed with the Commission on Form C, provided to investors and the relevant intermediary and made available to potential investors.[212] The issuer would check the box for ''Form C–A: Amendment'' on the cover of the Form C and explain, in summary manner, the nature of the changes, additions or updates in the space provided. An issuer would determine whether changes in the offer terms or disclosure are material based on the facts and circumstances. Information is material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether or not to purchase the securities.[213] For example, we believe that a material change to financial condition or to the intended use of proceeds would require an amendment to an issuer's disclosure. Also, in those instances in which an issuer has previously disclosed only the method for determining the price, and not the final price, of the securities offered, we believe that determination of the final price would be considered a material change to the terms of the offer and would have to be disclosed. These are not, however, the only possible material changes that would require amended disclosure. In addition, as discussed further in Section II.C.6 below, if any change, addition or update constitutes a material change to information previously disclosed, the issuer shall check the box indicating that investors must reconfirm their investment commitments. Investors would have five business days to reconfirm their investment commitments, or the investment commitments would be cancelled.[214]

Issuers would be permitted, but not required, to amend the Form C to provide information with respect to other changes that are made to the information presented on the intermediary's platform and provided to investors and potential investors.[215] Issuers amending the Form C to provide information that it considers not material would not check the box indicating that investors must reconfirm their investment commitments.

Request for Comment

76. Should we specify that an amendment to an offering statement must be filed within a certain time period after a material change occurs? Why or why not? What would be an appropriate time period for filing an amendment to an offering statement to reflect a material change? Why?

77. If an issuer amends its Form C, should the intermediary be required to notify investors? If so, should we specify the method of notification, such as via email or other electronic means?

78. Should establishment of the final price be considered a material change that would always require an amendment to Form C and reconfirmation, as proposed? Would it be appropriate to require disclosure of the final price but not require reconfirmation? Should we consider any change to the information required by Section 4A(b)(1) to be a material change? Why or why not?

79. Should we require issuers to amend Form C to reflect all changes, additions or updates regardless of materiality so that the Form C filed with us would reflect all information provided to investors through the intermediary's platform? Why or why not?

2. Ongoing Reporting Requirements

Section 4A(b)(4) requires, ''not less than annually, [the issuer to] file with the Commission and provide to investors reports of the results of operations and financial statements of the issuer, as the Commission shall, by rule, determine appropriate, subject to such exceptions and termination dates as the Commission may establish, by rule.''

One commenter suggested that the Commission should create a standardized form or template for this ongoing disclosure.[216] The same commenter suggested that this ongoing disclosure should be publicly available and shared with other regulators. Another commenter noted that the requirement to file reports not less than annually could be difficult to enforce and that it is unclear who would be responsible for enforcing the requirement.[217] The same commenter noted that this provision seems to presume the success of every business that raises capital through crowdfunding and questioned what would happen when an issuer goes out of business. One commenter suggested that financial statements included in an annual report should be required to be reviewed or audited only if the issuer's total assets exceeded a specified amount at the last day of the issuer's fiscal year.[218] One commenter suggested that annual reports should be required to be reviewed by a qualified accountant in good standing for at least five years.[219] Two commenters noted that compliance with the exemption would not be known at the time of the transaction if the annual reports are a condition to the

[212] *See* proposed Rule 203(a)(2) of Regulation Crowdfunding.

[213] *See Basic Inc.* v. *Levinson,* 485 U.S. 224 (1988) (quoting *TSC Indus., Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976)).

[214] *See* proposed Rule 203(a)(2) of Regulation Crowdfunding.

[215] *See* proposed Instruction to paragraph (a)(2) of proposed Rule 203 of Regulation Crowdfunding.

[216] *See* Commonwealth of Massachusetts Letter.

[217] *See* Crowdfunding Offerings Ltd. Letter 5.

[218] *See* ABA Letter 1 (suggesting that financial statements reviewed by an independent accountant be required only if the issuer's total assets as of the end of its fiscal year exceeded $300,000 and that audited financial statements be required only if the issuer's total assets exceeded $750,000 because (i) public reporting pursuant to Exchange Act Section 12(g) is based, in part, on an asset test and (ii) this would offer a reasonable predicate for balancing the relative costs to very small, early-stage issuers and the informational benefits to investors).

[219] *See* Philipose Letter 2.

exemption under Section 4(a)(6).[220] One commenter suggested that the Commission should require a failed business that issued securities pursuant to Section 4(a)(6) to file a final annual report, in the year of the failure, that provides final financial statements and discloses to investors the material reasons for the liquidation, dissolution, wind-down or bankruptcy.[221]

To implement the ongoing reporting requirement in Section 4A(b)(4), the proposed rules would require an issuer that sold securities in reliance on Section 4(a)(6) to file a report on EDGAR annually, no later than 120 days after the end of the most recent fiscal year covered by the report.[222] Although the statute provides that an ''issuer who offers or sells securities'' in reliance on Section 4(a)(6) shall provide ongoing reports, we do not believe the intent was to require ongoing reports from a company that has not completed a crowdfunding transaction and thus did not issue any securities.

To implement the statutory requirement that issuers provide the report to investors, we propose to require issuers to post the annual report on their Web sites.[223] We believe that investors in this type of Internet-based offering would be familiar with obtaining information on the Internet and that providing the information in this manner would be cost-effective for issuers. As discussed above, we believe Congress contemplated that crowdfunding would, by its very nature, occur over the Internet or other similar electronic media accessible to the public,[224] so we are not proposing to require issuers to provide physical copies of the report to investors. We also are not proposing to require issuers to provide a copy of the annual report, or refer investors to the posting of the annual report, via email because we believe that many issuers may not have email addresses for the investors, especially after the shares issued pursuant to Section 4(a)(6) are traded by the original purchasers.[225] To the extent email addresses for investors are available to issuers, an issuer could refer investors to the posting of the annual report via email.

When filing the annual report with the Commission, an issuer would check the box for ''Form C–AR: Annual Report'' on the cover of the Form C. The issuer would be required to disclose information similar to the information required in the offering statement, including disclosure about its financial condition that meets the financial statement requirements that were applicable to its offering statement. The issuer also would be able to voluntarily provide financial statements that meet the requirements for a higher aggregate target offering amount than it was required to provide in its offering statement. If an issuer undertakes multiple offerings, which individually require different levels of financial statements, the issuer would be required to provide financial statements that meet the highest standard previously provided. We believe that investors who purchased on the basis of the higher level of financial statements should continue to receive that level of disclosure, and investors in other offerings of the issuer should receive the same information.[226] Although an issuer would not be required to provide the offering-specific information that it filed at the time of the offering (because the issuer will not be offering or selling securities),[227] it would be required to disclose information about the company and its financial condition, as was required in connection with the offer and sale of the securities.[228] This should minimize the disclosure burden for issuers to the extent they would be able to use the offering materials as a basis to prepare the ongoing disclosure. Investors should benefit from receiving annual updates to the information they received when making the decision to invest in the issuer's securities, which should allow them to continue to be informed about issuer developments. Under the statute and the proposed rules, the securities will be freely tradable after one year and, therefore, this information also would benefit potential future holders of the issuer's securities and help them to make more informed investment decisions.

We are proposing to require issuers to file the annual report until one of the following events occurs: (1) The issuer becomes a reporting company required to file reports under Exchange Act Sections 13(a) or 15(d); (2) the issuer or another party purchases or repurchases all of the securities issued pursuant to Securities Act Section 4(a)(6), including any payment in full of debt securities or any complete redemption of redeemable securities; or (3) the issuer liquidates or dissolves its business in accordance with state law.[229] In these situations, we believe it is appropriate to terminate an issuer's reporting obligations because it will either be required by other provisions of the securities laws to provide investors with necessary information or it will no longer have investors. Any issuer terminating its annual reporting obligations would be required to file on EDGAR, within five business days from the date of the terminating event, a notice to investors and the Commission that it will no longer file and provide annual reports pursuant to the requirements of Regulation Crowdfunding.[230] The issuer would check the box for ''Form C–TR: Termination of Reporting'' on the cover of Form C.

Request for Comment

80. Should we require ongoing annual reports, as proposed? Why or why not? Should we require ongoing reporting more frequently than annually? Why or

[220] *See* Ohio Division of Securities Letter; Whitaker Letter (suggesting that the filing of the annual report should not be a condition to satisfying the exemption under Section 4(a)(6)).

[221] *See* Ohio Division of Securities Letter.

[222] *See* proposed Rule 202(a) of Regulation Crowdfunding. *See also* proposed Rule 203(b) of Regulation Crowdfunding and proposed Instruction to paragraph (b)(1) thereof.

[223] We are not proposing to require issuers to post the annual report on the intermediary's platform because issuers may not necessarily have an ongoing relationship with the intermediary following an offering. *See* discussion in Section II.C.4.b below.

[224] *See* note 55.

[225] We believe that in order for the issuer to have email addresses for the investors, it would need to obtain those email addresses from the intermediary, since it would be the intermediary that would collect that information when a potential investor opens an account. In order for the issuer to have email addresses after the shares issued pursuant to Section 4(a)(6) are traded, an issuer would need to collect that information from each new investor in connection with any sale of the issuer's securities in a secondary market.

[226] For example, if an issuer had previously completed an offering with a $200,000 target and an offering with a $700,000 target, the issuer would be required to provide audited financial statements rather than reviewed financial statements. This would be the case even if the $200,000 offering was conducted more recently than the $700,000 offering.

[227] An issuer would not be required to provide information about: (1) The stated purpose and intended use of the proceeds of the offering; (2) the target offering amount and the deadline to reach the target offering amount; (3) whether the issuer will accept investments in excess of the target offering amount; (4) whether, in the event that the offer is oversubscribed, shares will be allocated on a pro-rata basis, first come-first served basis, or other basis; (5) the process to complete the transaction or cancel an investment commitment once the target amount is met; (6) the price to the public of the securities being offered; (7) the terms of the securities being offered; (8) the name, Commission file number and CRD number (as applicable) of the intermediary through which the offering is being conducted; and (9) the amount of compensation paid to the intermediary.

[228] Issuers would be required to provide disclosure about its directors and officers, business, current number of employees, financial condition (including financial statements), capital structure, significant factors that make an investment in the issuer speculative or risky, material indebtedness and certain related-party transactions.

[229] *See* proposed Rule 202(b) of Regulation Crowdfunding.

[230] *See* proposed Rule 203(b)(2) of Regulation Crowdfunding.

why not? If so, how often (*e.g.,* semi-annually or quarterly)?

81. Two commenters noted that compliance with the exemption would not be known at the time of the transaction if the annual reports are a condition to the exemption under Section 4(a)(6).[231] Should the requirement to provide ongoing annual reports be a condition to the exemption under Section 4(a)(6)? If so, for how long (*e.g.,* until the first annual report is filed, until the termination of an issuer's reporting obligations or some other period)? Please explain.

82. Should we require that the annual reports be provided to investors by posting the reports on the issuer's Web site and filing them on EDGAR, as proposed? Should we require issuers also to directly notify investors of the availability of the annual report, such as by email or other electronic means? Should we instead require issuers to deliver the annual reports directly to investors? If so, should we specify the method of delivery (*e.g.,* email or other electronic means, U.S. mail or some other method)? Would investors have an electronic relationship with the issuer after the offering terminates? If not, how would an issuer notify or deliver a copy of the annual report to the investor? Would issuers continue to have an ongoing relationship with intermediaries once the offering is completed? If so, should we also require that the issuer post its annual report on the intermediary's platform? Why or why not?

83. After completion of the offering, should we require that investors be represented by a nominee or other party who could help to facilitate physical delivery of the annual report to investors? Why or why not? Should the nominee or other party have other responsibilities, such as speaking on behalf of and representing the interests of investors (*e.g.,* when the issuer wishes to take certain corporate actions that could impact or dilute the rights of investors, distribution of dividend payments, etc.)? If a nominee or other party should be required, what structure should this arrangement take and why?

84. Are the proposed ongoing disclosure requirements appropriate? Why or why not? Should we modify or eliminate any of the proposed requirements?

85. Should the discussion of the issuer's financial condition address changes from prior periods? Why or why not? Should the number of years covered by the financial statements be the same as in the offering statement? Why or why not? If not, what should they be?

86. Should we require that reviewed or audited financial statements be provided only if the total assets of the issuer at the last day of its fiscal year exceeded a specified amount, as one commenter suggested? [232] Why or why not? If so, what level of total assets would be appropriate (*e.g.,* $1 million, $10 million, or some other amount)? Are there other criteria (other than total assets) that we should consider? Please explain.

87. The proposed rules would require any issuer terminating its annual reporting obligations to file on EDGAR, within five business days from the date of the terminating event, a notice to investors and the Commission that it will no longer file and provide annual reports. Is this approach appropriate? Why or why not? Should we require issuers to file the notice earlier (*e.g.,* within two business days of the event) or later (*e.g.,* within 10 business days of the event)? If so, what would be an appropriate amount of time after the event and why?

88. Should an issuer be able to terminate its annual reporting obligation in circumstances other than those provided in the proposed rules? For example, should an issuer be allowed to terminate its reporting obligation after filing a certain number of annual reports, as one commenter suggested,[233] so long as the issuer does not engage in additional transactions in reliance on Section 4(a)(6) (*e.g.,* after filing one annual report, two annual reports or some other number of annual reports)? Why or why not? If so, what would be an appropriate number of annual reports? Should all issuers be allowed to terminate their reporting obligations or only issuers that have not sold more than a certain amount of securities in reliance on Section 4(a)(6)? If so, what would be an appropriate amount of securities (*e.g.,* $100,000, $500,000, or some other amount)? Should an issuer be allowed to terminate its reporting obligation following the issuer's or another party's purchase or repurchase of a significant percentage of the securities issued in reliance on Section 4(a)(6) (including any payment of a significant percentage of debt securities or redemption of a significant percentage of redeemable securities), or receipt of consent to cease reporting from a specified percentage of the unaffiliated security holders? Why or why not? If so, what would be an appropriate percentage (greater than 50 percent, 75 percent or some other percentage)? Should an issuer be allowed to terminate its reporting obligation if the securities issued in reliance on Section 4(a)(6) are held by less than a specified number of holders of record, as suggested by a commenter? [234] Why or why not? If so, what would be an appropriate number of holders of record (less than 500, 300 or some other number)?

89. If an issuer files a petition for bankruptcy, what effect should that filing have on the issuer's reporting obligations? Please explain.

90. Should issuers be required to file reports to disclose the occurrence of material events on an ongoing basis? What events would be material and therefore require disclosure? Should we identify a list of material events that would trigger a report, similar to the list in Form 8–K [235] (such as changes in control, bankruptcy or receivership, material acquisitions or dispositions of assets, issuances of securities and changes to the rights of security holders)? Or should we require that all material events be reported without specifying any particular events? How many days after the occurrence of the material event should the issuer be required to file the report? Please explain.

91. We have the authority to include exceptions to the ongoing reporting requirements in Section 4A(b)(4). Should we consider excepting certain issuers from ongoing reporting obligations (*e.g.,* those raising a certain amount, such as $100,000 or less)? Should any exception always apply or only after a certain number of reports have been filed? Please explain.

3. Form C and Filing Requirements

Section 4A(b)(1) does not specify a format that issuers must use to present the required disclosures and file these disclosures with the Commission. Several commenters stated that the Commission should require the disclosure on a form modeled after, or

[231] *See* Ohio Division of Securities Letter; Whitaker Letter.

[232] *See* ABA Letter 1.

[233] *See* Schwartz Letter.

[234] *See* ABA Letter 1.

[235] 17 CFR 249.308. Form 8–K is a report that public companies must file to announce major events that shareholders should know about on a more current basis. Form 8–K includes a specific list of the types of events that trigger a public company's obligation to file a current report, including matters relating to the company's business and operations, financial information, securities and trading markets, accountants and financial statements, corporate governance and management, asset-backed securities, exhibits and other matters that are not specifically called for by Form 8–K that the company considers to be of importance to security holders. Generally, a Form 8–K must be filed within four business days from the date of the event that triggered the report.

require the use of NASAA's Small Company Offering Registration Form (U–7).[236] One commenter suggested using Form 1–A, which is used for securities offerings made pursuant to Regulation A,[237] as a model.[238] One commenter requested that we create a form for issuers that ''simplifies the process and provides legal certainty for investors, intermediaries and issuers,'' [239] while another commenter suggested that we adopt a ''simple, uniform, easy-to-understand yet comprehensive template prospectus that is similar in principle to the mutual fund industry's summary prospectus.'' [240] Another commenter recommended that disclosure be simple, allow for standardization and take into account the size and stage of development of the issuer.[241] One commenter suggested we create a disclosure template that would allow issuers to complete certain fields by inserting the required disclosure.[242] Another commenter suggested we require a single offering document incorporating disclosures that intermediaries and issuers are required to make.[243]

We are proposing to require issuers to file the mandated disclosure on EDGAR using new Form C.[244] As proposed, Form C would require certain disclosures to be presented in a specified format, while allowing the issuer to customize the presentation of other disclosures required by Section 4A(b)(1) and the related rules. This approach should provide key offering information in a standardized format and give issuers flexibility in the presentation of other required disclosures. We believe this flexibility is important given that we expect that issuers engaged in crowdfunding transactions in reliance on Section 4(a)(6) would encompass a wide variety of industries at different stages of business development.

We propose to require issuers to use an XML-based fillable form to input certain information.[245] This XML-based fillable form would support the assembly and transmission of those required disclosures to EDGAR on Form C.[246] It also would help the Commission to collect certain key information about each offering to monitor the implementation of the crowdfunding exemption under Section 4(a)(6). For example, the Commission could monitor the types of issuers using the exemption, including the issuers' size, location, securities offered and offering amounts and the intermediaries through which the offerings are taking place. Monitoring the implementation of the crowdfunding exemption also would give the Commission more information to evaluate whether the rules include appropriate investor protections and facilitate capital formation. Issuers could customize the presentation of the rest of their disclosures and file those disclosures as exhibits to the Form C. For example, an issuer could provide the required disclosures by uploading to EDGAR, as an exhibit to Form C, a text version of the relevant information presented on the intermediary's platform, including a transcript of any video presentation and a description of any charts or graphs.

Under the proposed rules, Form C would be used for all of an issuer's filings with the Commission.[247] The issuer would check one of the following boxes on the cover of the Form C to indicate the purpose of the Form C filing:

- ''Form C: Offering Statement'' for issuers filing the initial disclosures required for an offering made in reliance on Section 4(a)(6);
- ''Form C–A: Amendment'' for issuers seeking to amend a previously-filed Form C for an offering;
- ''Form C–U: Progress Update'' for issuers filing a progress update required by Section 4A(b)(1)(H) and the related rules;
- ''Form C–AR: Annual Report'' for issuers filing the annual report required by Section 4A(b)(4) and the related rules; and
- ''Form C–TR: Termination of Reporting'' for issuers terminating their reporting obligations pursuant to Section 4A(b)(4) and the related rules.

We believe that the use of one form would be more efficient than requiring multiple forms and would simplify the filing process for issuers and their preparers. EDGAR would automatically provide each filing with an appropriate tag depending on which box the issuer checks so that investors could distinguish between the different filings.[248]

Section 4A(b)(1) requires issuers to file the offering information with the Commission, provide it to investors and the relevant intermediary and make it available to potential investors.[249] Under the proposed rules, issuers would satisfy the requirement to file the information with the Commission by filing the Form C: Offering Statement, including any amendments and progress updates, on EDGAR. To satisfy the requirement to provide the disclosures to the relevant intermediary, we propose that issuers provide to the relevant intermediary a copy of the disclosures filed with the Commission on EDGAR.[250] To satisfy the requirement to

[236] *See* Coan Letter; Liles Letter 1; Vim Funding Letter; NASAA Letter.

[237] 17 CFR 230.251 *et seq.*

[238] *See* Commonwealth of Massachusetts Letter.

[239] CFIRA Letter 2.

[240] The Motley Fool Letter.

[241] *See* 2012 SEC Government-Business Forum, note 29.

[242] *See* ABA Letter 1.

[243] *See* Ohio Division of Securities Letter.

[244] An issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned a user identification number, which we call a ''Central Index Key (CIK)'' code, would need to obtain the codes by filing electronically a Form ID [17 CFR 239.63; 249.446; 269.7 and 274.402] at *https://www.filermanagement.edgarfiling.sec.gov*. The applicant also would be required to submit a notarized authenticating document as a Portable Document Format (PDF) attachment to the electronic filing. The authenticating document would need to be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID and confirm the authenticity of the Form ID. *See* 17 CFR 232.10(b)(2).

[245] *See* proposed Instruction to paragraph (a)(1) of proposed Rule 203 of Regulation Crowdfunding. Issuers would input in the proposed XML-based filing the following information: name, legal status and contact information of the issuer; name, Commission file number and CRD number (as applicable) of the intermediary through which the offering will be conducted; the amount of compensation paid to the intermediary to conduct the offering, including the amount of referral and other fees associated with the offering; type of security offered; number of securities offered; offering price; target offering amount and maximum offering amount (if different from the target offering amount); whether oversubscriptions will be accepted and, if so, how they will be allocated; deadline to reach the target offering amount; current number of employees of the issuer; and selected financial data for the prior two fiscal years.

[246] The Commission would disseminate the information in a format that provides normal text for reading and XML-tagged data for analysis. Currently the Commission's OnlineForms Web site (*https://www.onlineforms.edgarfiling.sec.gov*) supports the assembly and transmission of XML filings required by Exchange Act Section 16 (15 U.S.C. 78p).

[247] *See* proposed Rule 203 of Regulation Crowdfunding.

[248] EDGAR would tag the offering statement as ''Form C,'' any amendments to the offering statement as ''Form C–A,'' progress updates as ''Form C–U,'' annual reports as ''Form C–AR'' and termination reports as ''Form C–TR.''

[249] Section 4A(b)(4) requires issuers to file with the Commission and provide to investors, not less than annually, reports of the results of operations and financial statements of the issuer. As discussed above in Section II.B.2, to satisfy this requirement, the proposed rules would require an issuer to post the annual report on its Web site and file it on EDGAR. *See* proposed Rule 202(a) of Regulation Crowdfunding.

[250] *See* proposed Instruction 1 to paragraph (a) of proposed Rule 203 of Regulation Crowdfunding. We anticipate that issuers seeking to engage in an offering in reliance on Section 4(a)(6) may likely work with an intermediary to prepare the disclosure that would be provided on the intermediary's platform and filed on EDGAR. In some cases, intermediaries may offer, as part of their service, to file the disclosure on EDGAR on behalf of the issuer.

provide the disclosures to investors and make them available to potential investors, we propose that issuers provide the information to investors electronically by referring investors to the information on the intermediary's platform.[251] Issuers could refer investors through a posting on the issuer's Web site or by email.[252] We believe that investors in this type of Internet-based offering would be familiar with obtaining information on the Internet and that providing the information in this manner would be cost-effective for issuers. As discussed above, we believe Congress contemplated that crowdfunding would, by its very nature, occur over the Internet or other similar electronic medium that is accessible to the public,[253] so we are not proposing to require issuers to provide physical copies of the information to investors. We propose to allow issuers to refer investors to the information on the intermediary's platform through a posting on the issuer Web site or by email, rather than requiring email, because we believe that many issuers may not have email addresses for investors.[254]

Request for Comment

92. Should we require a specific format that issuers must use to disclose the information required by Section 4A(b)(1) and the related rules?

93. Should issuers be required to file the Form C with the Commission in electronic format only, as proposed? Alternatively, should we permit issuers to file the Form C in paper format? What are the relative costs and benefits of permitting the filing of the Form C in paper format? Should issuers be precluded from relying on the hardship exemptions in Rules 201 and 202 of Regulation S–T? [255] Why or why not?

94. In what format would the information about an issuer be presented on an intermediary's platform? Will there be written text, graphics, charts or graphs, or video testimonials by the founder or other key stakeholders? Will the information be presented in a way that would allow for the filing of the information as an exhibit to Form C on EDGAR? If not, how should the rules address these types of materials?

95. Should we require different forms for each type of required filing? Would the use of one form with different EDGAR tags for each type of filing create confusion among investors who review the issuer's filings? Would it create confusion for issuers that are filing the forms? Please explain.

96. Should we allow issuers to refer investors and potential investors to the information on the intermediary's platform? Are the proposed methods (Web site posting or email) to refer investors effective and appropriate? Would issuers have access to the investors' email addresses? Are there other methods we should consider? If so, what methods and why?

4. Prohibition on Advertising Terms of the Offering

Section 4A(b)(2) provides that an issuer shall ''not advertise the terms of the offering, except for notices which direct investors to the funding portal or broker.'' We received a number of comments regarding this provision. One commenter stated that the inability to market an offering will prevent startups from reaching their desired goal.[256] One commenter suggested that we should allow issuers unrestricted use of advertising, both on the Internet and through conventional forms of advertising.[257] Another commenter suggested that communications between the issuer and investors should be limited to communication channels controlled by the intermediary and that direct communications between an issuer and investors should be discouraged.[258] Another commenter stated that it is unclear what constitutes a notice for these purposes and that issuers should be able to promote their offerings as long as investors register with the intermediary and participate in the offering through that intermediary.[259] Another commenter suggested that issuers should be able to promote their offerings through ''their own platforms'' as long as all such notices include a link directly to the registered intermediary.[260] One commenter suggested that an issuer should be permitted to place a notice consisting of the basic terms of the offering on the issuer's Web site or at its place of business.[261] Alternatively, the commenter suggested an issuer should be permitted to include such notice in correspondence to its customers or mailing list subscribers.[262]

Another commenter stated that the advertising prohibition should not be read to restrict notices that: (1) Alert the public to the issuer's project or company; (2) state that the public may participate in the fundraising; or (3) direct the public to the funding platform.[263] Another commenter suggested notices should be allowed to include: (1) The type of security being offered; (2) the offering amount; (3) the opening and closing date of the offering; and (4) the issuer's line of business or whether the offering will fund a new line of business.[264] One commenter suggested that, given the limitations on the number of characters allowed by some social media sites, we should allow notices that do not require lengthy legends or disclosure.[265] Another commenter suggested that we define the term ''advertising'' and provide a model form that can be used by issuers to direct investors to the intermediary.[266] Another commenter suggested that we require issuers to file all advertising and other materials that the issuers create relating to offerings made in reliance on Section 4(a)(6).[267] One commenter suggested that we allow advertising of non-financial elements of a transaction in the case of offerings conducted through an intermediary that is a community development financial institution.[268]

Under the proposed rules, an issuer could publish a notice advertising the terms of an offering in reliance on Section 4(a)(6), provided that the notice includes the address of the intermediary's platform on which additional information about the issuer and the offering may be found.[269] Consistent with Section 4A(b)(2), an issuer would not otherwise be permitted to advertise, directly or indirectly, the terms of an offering made in reliance on Section 4(a)(6). While we understand

[251] *See* proposed Instruction 2 to paragraph (a) of proposed Rule 203 of Regulation Crowdfunding.

[252] *Id.*

[253] *See* note 55.

[254] *See* note 225. To the extent that intermediaries have the email addresses of investors and potential investors (*e.g.,* as a result of investors and potential investors opening an account with the intermediary), intermediaries could provide an issuer's disclosures to investors and potential investors through email.

[255] 17 CFR 232.201 and 232.202. These hardship exemptions allow filers, under certain conditions, to submit their filings and exhibits in paper form instead of electronically.

[256] *See* VTNGLOBAL Letter.

[257] *See* Loofbourrow Letter.

[258] *See* CommunityLeader Letter.

[259] *See* Crowdfunding Offerings Ltd. Letter 5.

[260] *See* CFIRA Letter 2.

[261] *See* NCA Letter (stating that the Commission should clarify whether the rules will permit notices to state the offering period, whether investors may contact the issuer's management to discuss the offering or whether the notices may include names of accredited investors participating in the offering).

[262] *Id.*

[263] *See* RocketHub Letter 1.

[264] *See* NSBA Letter.

[265] *See* CFIRA Letter 1 (providing examples of notices varying in length from zero to 1,500 characters).

[266] *See* CompTIA Letter.

[267] *See* Commonwealth of Massachusetts Letter.

[268] *See* City First Letter.

[269] *See* proposed Rule 204 of Regulation Crowdfunding.

the importance that potential issuers likely will place on the ability to advertise, the statute specifically restricts the ability of issuers to advertise the terms of offerings made in reliance on Section 4(a)(6). Limiting the advertising of the terms of the offering to the information permitted in the notice is intended to direct investors to the intermediary's platform and to make investment decisions with access to the disclosures necessary for them to make informed investment decisions.

The proposed rules would allow notices advertising the terms of the offering to include no more than the following: (1) A statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted and a link directing the potential investor to the intermediary's platform; (2) the terms of the offering; and (3) factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number and Web site of the issuer, the email address of a representative of the issuer and a brief description of the business of the issuer.[270] Under the proposed rules, ''terms of the offering'' would include: (1) The amount of securities offered; (2) the nature of the securities; (3) the price of the securities; and (4) the closing date of the offering period.[271]

The permitted notices would be similar to the ''tombstone ads'' permitted under Securities Act Rule 134,[272] except that the notices would be required to direct investors to the intermediary's platform through which the offering is being conducted,[273] such as by including a link directing the potential investor to the platform.[274] We are not proposing to impose limitations on how the issuer distributes the notices. For example, issuers could place notices in newspapers or could post notices on social media sites. We believe this approach would allow issuers to leverage social media to attract potential investors, while at the same time protecting potential investors by limiting the ability of issuers to advertise the terms of the offering without providing the required disclosures.

The proposed rules also would allow an issuer to communicate with investors and potential investors about the terms of the offering through communication channels provided by the intermediary on the intermediary's platform, so long as the issuer identifies itself as the issuer in all communications. We believe that one of the central tenets of the concept of crowdfunding is that the members of the crowd decide whether or not to fund an idea or business after sharing information with each other. As part of those communications, we believe it is important for the issuer to be able to respond to questions about the terms of the offering or even challenge or refute statements made through the communication channels provided by the intermediary. Therefore, we have not proposed to restrict issuers from participating in those communications.

The proposed rules would not restrict an issuer's ability to communicate other information that does not refer to the terms of the offering. We believe that this is consistent with the statute because Section 4A(b)(2) only appears to impose a restriction on the advertising of the terms of the offer. To prohibit communications that do not refer to the terms of the offering would place a greater burden on issuers relying on Section 4(a)(6) than on issuers in registered offerings. For example, Securities Act Rule 169[275] permits non-Exchange Act reporting issuers engaged in an initial public offering to continue to publish, subject to certain exclusions and conditions, regularly released factual business information that is intended for use by persons other than in their capacity as investors or potential investors.[276] We believe that permitting issuers to continue to engage in communications that do not refer to the terms of the offering during the pendency of offering made in reliance on Section 4(a)(6) would increase the likelihood of the success of an issuer's business because the issuer could continue to advertise its products or services, so long as it does so without discussing the terms of the offering.

Request for Comment

97. Should we require issuers to file with the Commission or provide to the intermediary a copy of any notice directing investors to the intermediary's platform? Why or why not?

98. The proposed rules would define ''terms of the offering'' to include: (1) The amount of securities offered; (2) the nature of the securities; (3) the price of the securities; and (4) the closing date of the offering period. Is this definition appropriate? Why or why not? Should the definition be modified to eliminate or include other items? If so, which ones and why? Should we provide further guidance as to the meaning of ''terms of the offering?'' Please explain.

99. Should we restrict the media that may be used for the advertising of notices (*e.g.,* prohibit advertising via television, radio or phone calls)? If so, why and what media should we restrict? What media should we permit? Please explain.

100. Should we require a specific format for issuer notices? Should we provide examples of notices that would comply with the requirements?

101. Should we further restrict or specify the information that could be included in a notice of the offering? If so, how and why? Is the information that we have proposed to permit in notices sufficient to inform potential investors of an offering? Should we permit the issuer to include any additional information in the notice if, for example, the offering aims to promote a particular social cause, such as driving economic growth in underinvested communities, as one commenter suggested?[277] If so, what information and why? Should we allow any additional information to be included in the notices for all offerings made in reliance on Section 4(a)(6)? Please explain. Should we impose restrictions on the timing or frequency of notices? Why or why not? If so, what restrictions would be appropriate?

102. Should we limit the issuer's participation in communication channels provided by the intermediary on the intermediary's platform? Why or why not? If so, what limitations would be appropriate?

103. The proposed rules would allow an issuer to communicate with investors and potential investors about the terms of an offering through communication channels provided by the intermediary on the intermediary's platform, so long as the issuer identifies itself as the issuer in all communications. Is this approach appropriate? Why or why not? If not, why not?

104. The proposed rules would not restrict an issuer's ability to communicate information that does not refer to the terms of the offering. Is this

[270] *See* proposed Rule 204(b) of Regulation Crowdfunding. While notices would not be required to include all of this information, they would be required to, at a minimum, direct investors and potential investors to the intermediary's platform on which additional information about the issuer and the offering may be found. *See* proposed Rule 204(a) of Regulation Crowdfunding.

[271] *See* proposed Instruction to proposed Rule 204 of Regulation Crowdfunding.

[272] 17 CFR 230.134.

[273] *See* proposed Rule 204(a) of Regulation Crowdfunding.

[274] *See* proposed Rule 204(b)(1) of Regulation Crowdfunding.

[275] 17 CFR 230.169.

[276] *Id. See also Securities Offering Reform,* Release No. 33–8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)].

[277] *See* City First Letter.

approach appropriate? Why or why not? If not, what limitations should we include on an issuer's communications that do not refer to the terms of the offering and why?

5. Compensation of Persons Promoting the Offering

Section 4A(b)(3) provides that an issuer shall ''not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication.''

We received comments offering varying views on this provision. One commenter noted that it is unclear precisely what this provision attempts to prohibit or protect against.[278] Another commenter suggested the rules should distinguish between an issuer hiring an individual or entity for promotion, where investors may not be aware of the commercial relationship between the parties, and more standard web-based advertising, including through search engines or trending topics.[279] This commenter suggested that we should not adopt rules that may interfere with promotional compensation, but rather, we should require simple disclosure of a commercial relationship when it would not otherwise be apparent. One commenter suggested that the rules should provide that a clear statement of the compensation amount paid to promoters (or a formula for determining the same) in the disclosure document would satisfy this disclosure obligation.[280] Another commenter suggested that if the issuer will use any promoters in connection with the offering, the issuer should identify the promoters and disclose the amount and structure of promoter compensation.[281]

Consistent with the statute, the proposed rules [282] would prohibit an issuer from compensating, or committing to compensate, directly or indirectly, any person to promote the issuer's offering through communication channels provided by the intermediary unless the issuer takes reasonable steps to ensure that the person clearly discloses the receipt (both past and prospective) of compensation each time the person makes a promotional communication.[283] In this regard, we anticipate that an issuer could, for example, contractually require any promoter to include the required statement about receipt of compensation, confirm that the promoter is adhering to the intermediary's terms of use that require promoters to affirm whether or not they are compensated by the issuer, monitor communications made by such persons and take the necessary steps to have any communications that do not have the required statement removed promptly from the communication channels, or retain a person specifically identified by the intermediary to promote all issuers on its platform. We anticipate that communication channels provided by the intermediary would provide a forum through which potential investors could share information to help the members of the crowd decide whether or not to fund the issuer.

We believe that it would be important for potential investors to know whether persons using these communication channels are the issuer, persons acting on behalf of the issuer or persons receiving compensation from the issuer to promote the issuer's offering because of the potential for self-interest or bias in communications by these persons. As such, the proposed rules would apply broadly to persons acting on behalf of the issuer, regardless of whether or not they are compensated or they receive compensation specifically for the promotional activities. For example, the proposed rules would apply to persons hired specifically to promote the offering, as well as to individuals who are otherwise employed by the issuer or who undertake promotional activities on behalf of the issuer. A founder or an employee of the issuer who engages in promotional activities on behalf of the issuer through the communication channels provided by the intermediary would be required to disclose, with each posting, that he or she is engaging in those activities on behalf of the issuer.

The proposed rules also would specify that the issuer shall not compensate or commit to compensate, directly or indirectly, any person to promote its offerings outside of the communication channels provided by the intermediary, unless the promotion is limited to notices that comply with the advertising rules discussed above in Section II.B.4.[284] This prohibition should prevent issuers from circumventing the restrictions on advertising by compensating a third party to do what the issuer cannot do directly.

Request for Comment

105. The proposed rules would prohibit an issuer from compensating or committing to compensate, directly or indirectly, any person to promote its offering outside of the communication channels provided by the intermediary, unless the promotion is limited to notices that direct investors to the intermediary's platform. Is this approach appropriate? Why or why not?

106. The proposed rules would require issuers to take reasonable steps to ensure that persons promoting the issuer's offering through communication channels provided by the intermediary disclose the receipt (both past and prospective) of direct or indirect compensation each time they make a promotional communication. Is this an appropriate approach to the statutory requirement for issuers to ensure that promoters make the required disclosures? If not, what standard should we apply and why?

107. Should we require that any person who receives compensation from the issuer to promote an issuer's offering through communication channels provided by the intermediary register with, or otherwise provide notice to, the intermediary? If so, should we require that person to disclose the amount of the compensation and the structure of the compensation arrangement to the intermediary? Why or why not? If so, what would be the purpose of such a requirement?

[278] *See* Crowdfunding Offerings Ltd. Letter 5 (asking a number of questions about what constitutes direct or indirect compensation, whether it is acceptable to promote offerings if no compensation is paid and whether the provision covers third parties who may have an interest in the offering and who pay for the promotion).

[279] *See* RocketHub Letter 1.

[280] *See* Schwartz Letter.

[281] *See* Commonwealth of Massachusetts Letter.

[282] *See* proposed Rule 205 of Regulation Crowdfunding. *See also* proposed Rule 303(c)(4) and the discussion in Section II.C.5.c below for requirements on intermediaries as they relate to disclosure in intermediary-provided communication channels of certain compensation and promotional activities.

[283] The receipt of transaction-based compensation in connection with the offer and sale of a security could cause a person to be a broker required to register with us under Exchange Act Section 15(a)(1) [15 U.S.C. 78*o*(a)(1)]. Issuers also would need to consider the application of Securities Act Section 17(b) [15 U.S.C. 77q] to these activities. Section 17(b) provides that ''[i]t shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.''

[284] *See* proposed Rule 205(b) of Regulation Crowdfunding.

108. Should the issuer provide disclosure of any person who receives compensation from the issuer to promote an issuer's offering? Why or why not?

6. Other Issuer Requirements

Some commenters addressed issues relating to oversubscriptions, the offering price, the type of securities that may be offered and how those securities should be valued.[285]

a. Oversubscriptions

Two commenters suggested that we should permit an issuer to raise capital in excess of the target offering amount, subject to certain conditions.[286] The proposed rules would not limit an issuer's ability to accept investments in excess of the target offering amount, subject to the $1 million annual limitation.[287] Issuers, however, would be required to provide disclosure to investors concerning this possibility.[288] Some commenters suggested that the rules require a defined range for permissible oversubscriptions.[289] We believe, however, that limits on oversubscriptions are not necessary if an issuer discloses how much it would be willing to accept in oversubscriptions, how the oversubscriptions would be allocated and the intended purpose of those additional funds.[290] We believe that this approach would provide investors, prior to the sale, with useful information to make an informed investment decision about an issuer that is seeking investments in excess of the target offering amount.

Request for Comment

109. Should we require that oversubscribed investments be allocated using a pro-rata, first-come, first-served or other method, rather than leaving that decision up to the issuer? Please explain.

110. Should we limit the maximum oversubscription amount to a certain percentage of the target offering amount? If so, what should the limit be and why?

111. Should we allow issuers to accept commitments in excess of the $1 million limitation so that if an investor withdraws his or her investment commitment prior to the closing of the offering, the issuer would still be able to raise $1 million? If so, should we require that investments in excess of $1 million be allocated using a pro-rata, first-come, first-served or other method, or should we leave that decision up to the issuer? Please explain.

b. Offering Price

One commenter suggested that the Commission should require issuers to set a fixed price for the offering and prohibit any dynamic pricing (*e.g.,* pricing per share that increases with the passage of time) because dynamic pricing schemes may apply time pressure on the investment decision.[291] We are not proposing to require issuers to set a fixed price or prohibit dynamic pricing because we believe that the statute contemplated flexible pricing by providing that issuers may disclose the method for determining the price provided that the final price and required disclosures are provided to each investor prior to the sale. We also believe that the proposed cancellation rights would address the concerns about time pressure on the investment decision because investors would have a reasonable opportunity to cancel the investment commitment after the price is fixed.[292]

Request for Comment

112. Should we require issuers to set a fixed price at the commencement of an offering or prohibit dynamic pricing? Why or why not?

c. Types of Securities Offered and Valuation

We received comments about the types of securities that could be offered and the valuation of securities offered. One commenter suggested that the Commission should not prescribe eligible types of securities because markets and securities may evolve.[293] Instead, the commenter urged the Commission to set forth minimum disclosure requirements for issuers and intermediaries to use when communicating the price and structure of offered securities. Another commenter suggested that the Commission require issuers to disclose their valuation and the factors they considered when determining such valuation.[294] Another commenter suggested that the Commission should prescribe a maximum valuation and ban certain dilution practices.[295] Another commenter suggested that if an offering exceeds certain valuation limitations (based, for instance, on company financial ratios), then the Commission should require that the shares held by company insiders be subject to a lock-up that would terminate after a period of time or after the company meets certain financial benchmarks.[296] Another commenter indicated that there are significant costs to properly ascertaining future valuations and that such a requirement could only be applied to corporations.[297]

The proposed rules would neither limit the type of securities that may be offered in reliance on Section 4(a)(6) nor prescribe a method for valuing the securities. In this regard, we note that the statute refers to ''securities'' and does not limit the types of securities that could be offered pursuant to the exemption. In addition, the statute does not require the use of a specific valuation method or ban any dilution practices. Issuers would be required to describe the terms of the securities and the valuation method in their offering materials.[298] We believe this approach is consistent with the statute and will provide flexibility to issuers to determine the types of securities that they offer to investors and how those securities are valued, while providing investors with the information they

[285] Securities Act Section 4A(b)(5) states that issuers shall ''comply with such other requirements as the Commission may, by rule, prescribe, for the protection of investors and in the public interest.''

[286] *See* ABA Letter 1 (stating that if the maximum amount exceeds the target offering amount, the issuer should be required to disclose: (1) The maximum amount that it could raise; (2) the total amount of securities that would be issued should the maximum amount be raised; (3) the anticipated use of proceeds should the maximum amount be raised; and (4) financial statements that would have been required had the target offering amount been equal to the maximum amount); Hutchens Letter (stating that issuers should be allowed to raise capital in excess of the target offering amount so long as the amount raised does not fall within a higher tier of financial statement requirements).

[287] *See* proposed Rule 201(h) of Regulation Crowdfunding.

[288] *Id.* Issuers also would need to allow investors to cancel the commitment to purchase the securities in the same way as it would have done had it not accepted oversubscriptions. *See* Section II.C.6 below for a discussion of the right to cancel the purchase commitment.

[289] *See* RocketHub Letter 1; CFIRA Letter 5; Hutchens Letter.

[290] *See* Section II.B.1.a.i(d) above for a discussion of the disclosure requirements if the issuer will accept investments in excess of the target offering amount.

[291] *See* Spinrad Letter 1.

[292] *See* Section II.C.6 below for a discussion of cancellation rights.

[293] *See* RocketHub Letter 1.

[294] *See* Sjogren Letter.

[295] *See* The Motley Fool Letter (stating that the Commission should specify a maximum valuation for issuers, perhaps at two, five, or 10 times the aggregate issue limit and should implement a rule to protect investors from issuers that might sell a special class of shares to the crowdfunding public that they eventually dilute in future offerings).

[296] *See* Commonwealth of Massachusetts Letter (stating that the Commission should require disclosure about the risks of buying securities of an early-stage company at a high valuation).

[297] *See* CrowdFund Connect Letter (stating that the Commission should clarify that an issuer would satisfy the requirement to describe how the securities being offered are being valued by providing an operating and management statement that clearly defines capital distributions).

[298] *See* proposed Rule 201(m) of Regulation Crowdfunding.

need to make an informed investment decision.

The proposed rules do not limit the types of securities that may be offered in reliance on Section 4(a)(6), and thus, debt securities may be offered and sold in crowdfunding transactions. In general, the issuance of a debt security raises questions about the applicability of the Trust Indenture Act of 1939 (''Trust Indenture Act'').[299] The Trust Indenture Act applies to any debt security sold through the use of the mails or interstate commerce, including debt securities sold in transactions that are exempt from Securities Act registration. A debt security sold in reliance on Section 4(a)(6) would need to be issued under a qualified indenture [300] or under an indenture that is exempt from qualification.[301] The Trust Indenture Act and related rules provide exemptions in some circumstances. For example, Trust Indenture Act Section 304(b) provides an exemption for any transaction that is exempted from the provisions of Securities Act Section 5 by Section 4 thereof.[302] We believe an issuer offering debt securities in reliance on Section 4(a)(6) would be able to rely on this exemption.[303] Based on the availability of this exemption from the requirements of the Trust Indenture Act, we are not proposing a specific exemption from the requirements of the Trust Indenture Act for offerings of debt securities made in reliance on Section 4(a)(6).

Request for Comment

113. Should we limit the types of securities that may be offered and sold in reliance on Section 4(a)(6) (*e.g.,* should the exemption be limited to offers and sales of equity securities)? If so, to what securities should crowdfunding be limited and why? Should we create a separate exemption for certain types of offerings of limited types of securities, as one commenter proposed? [304]

114. Is it anticipated that issuers may want to conduct crowdfunding offerings of securities under Section 4(a)(6) alongside non-securities-based crowdfunding, such as a crowdfunding campaign for donations or rewards? If so, please describe how these offerings may be structured. Are there any issues in particular that our rules should address in the context of such simultaneous crowdfunding offerings? Please explain.

115. Should we require or prohibit a specific valuation methodology? If so, what method and why? Should we specify a maximum valuation allowed as suggested by one commenter? [305] Why or why not?

C. Requirements on Intermediaries

1. Brokers and Funding Portals

Securities Act Section 4(a)(6)(C) requires a crowdfunding transaction to be conducted through a broker or funding portal that complies with the requirements of Securities Act Section 4A(a). The term ''broker'' is generally defined in Exchange Act Section 3(a)(4) as any person that effects transactions in securities for the account of others. Exchange Act Section 3(a)(80),[306] as added by Section 304 of the JOBS Act, defines the term ''funding portal'' as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6), that does not: (1) Offer investment advice or recommendations; (2) solicit purchases, sales or offers to buy the securities offered or displayed on its platform or portal; (3) compensate employees, agents or other person for such solicitation or based on the sale of securities displayed or referenced on its platform or portal; (4) hold, manage, possess or otherwise handle investor funds or securities; or (5) engage in such other activities as the Commission, by rule, determines appropriate.

Because a funding portal would be engaged in the business of effecting securities transactions for the accounts of others through crowdfunding, it would meet the Exchange Act definition of broker.[307] The proposed rules would define ''funding portal'' consistent with the statutory definition of ''funding portal,'' substituting the word ''broker'' for the word ''person,'' [308] to state explicitly and make clear that funding portals are brokers under the federal securities laws. We are not proposing at this time to exercise our discretion under Section 3(a)(80)(E) to prohibit any activities in which a funding portal may engage, other than those identified in the statute.[309]

The proposed rules would not only apply to funding portals, but also to their associated persons in many instances. The proposed rules would define the term ''person associated with a funding portal or associated person of a funding portal'' to mean any partner, officer, director or manager of a funding portal (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling or controlled by a funding portal, or any employee of a funding portal, but would exclude any persons whose functions are solely clerical or ministerial.[310] The rules would provide, however, that excluded persons nevertheless would be subject to our authority under Exchange Act Sections 15(b)(4) and 15(b)(6) because they are associated with a broker.[311] This definition is consistent with, and modeled on, the definition of ''person associated with a broker or dealer or associated person of a broker or dealer'' under Exchange Act Section 3(a)(18).[312]

Request for Comment

116. Are there other funding portal activities, other than those in Exchange Act Section 3(a)(80), that we should prohibit? If so, which activities and why? Are there any prohibitions that should be modified or removed? If so, which ones and why?

117. Do we need to provide further guidance concerning which provisions of the Exchange Act and the rules and regulations thereunder would apply to funding portals? If so, what further guidance is necessary and why?

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[299] 15 U.S.C. 77aaa *et seq.*

[300] *See* Trust Indenture Act Section 309 [15 U.S.C. 77iii].

[301] *See* Trust Indenture Act Section 304 [15 U.S.C. 77ddd].

[302] 15 U.S.C. 77ddd(b).

[303] Trust Indenture Act Section 304(a)(8) [15 U.S.C. 77ddd(a)(8)] and Rule 4a–1 [17 CFR 260.4a–1] also provide an exemption to issue up to $5 million of debt securities without an indenture in any 12-month period.

[304] *See* City First Letter.

[305] *See* The Motley Fool Letter.

[306] The JOBS Act inadvertently created two Sections 3(a)(80) in the Exchange Act, the other being the definition of ''emerging growth company'' (added by Section 101(b) of Title I of the JOBS Act).

[307] *See* discussion in Section II.D.2 below.

[308] *See* proposed Rule 300(c)(2) of Regulation Crowdfunding.

[309] In proposing Regulation Crowdfunding, we propose requirements that are tailored to the limited brokerage activities in which funding portals may engage. Even where requirements proposed for funding portals are the same as those imposed on brokers, such as the AML requirements discussed in Section II.D.4 below, due to the limited nature of funding portals' activities, the compliance burden on funding portals should be less extensive than those applicable to full service brokers under the existing regulatory regime for broker-dealers.

[310] *See* proposed Rule 300(c)(1) of Regulation Crowdfunding.

[311] Exchange Act Section 15(b)(4) (15 U.S.C. 78*o*(b)(4)) authorizes the Commission to bring administrative proceedings against a broker when the broker violates the federal securities laws (and for other misconduct) and provides for the imposition of sanctions, up to and including the revocation of a broker's registration. Exchange Act Section 15(b)(6) (15 U.S.C. 78*o*(b)(6)) provides similar enforcement authority against the persons associated with a broker, including barring persons from associating with any Commission registrant. *See* note 559.

[312] 15 U.S.C. 78c(a)(18).

2. Requirements and Prohibitions

a. Registration and SRO Membership

Securities Act Section 4A(a)(1) requires that a person acting as an intermediary in a crowdfunding transaction register with the Commission as a broker or as a funding portal. The proposed rules would implement this requirement by providing that a person acting as an intermediary in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) must be registered with the Commission as a broker under Exchange Act Section 15(b) or as a funding portal pursuant to Securities Act Section 4A(a)(1) and proposed Rule 400 of Regulation Crowdfunding.[313]

One commenter requested transparency in the registration process, stating that intermediaries' completed registration materials should be accessible to the public.[314] Brokers currently register with the Commission using Form BD. Information on that form regarding the broker's credentials, including current registrations or licenses and employment and disciplinary history, is publicly available on FINRA's BrokerCheck.[315] As discussed below, we are proposing to make the information that a funding portal provides on proposed Form Funding Portal, other than personally identifiable information or other information with a significant potential for misuse, accessible to the public.[316] One commenter urged the Commission to grant funding portals a one-year moratorium from having to register.[317] We are not proposing such a moratorium because the statute clearly states that a person acting as an intermediary in a crowdfunding transaction made in reliance on Section 4(a)(6) must be registered with the Commission either as a broker or as a funding portal.

Another commenter requested clarification on whether a person acting as an intermediary in a transaction under Section 4(a)(6) would be required to register with us as an exchange, as defined in Exchange Act Section 3(a)(1), or as an alternative trading system.[318] As discussed above, Section 4A(a)(1) requires an intermediary that facilitates crowdfunded issuances of securities to register with us either as a broker or as a funding portal. Facilitating crowdfunded transactions alone would not require an intermediary to register as an exchange or as an alternative trading system (*i.e.,* registration as a broker-dealer subject to Regulation ATS). To the extent that an intermediary facilitates secondary market activity in securities issued in reliance on Section 4(a)(6), the intermediary would be required to register as an exchange or as an alternative trading system if it met the criteria in Exchange Act Rule 3b–16.[319] We note, however, that a funding portal, by definition, is limited to acting as an intermediary in transactions involving the offer or sale of securities for the account of others solely pursuant to Section 4(a)(6),[320] which are primary issuances of securities. Thus, a funding portal could not effect secondary market transactions in securities.

Exchange Act Section 4A(a)(2) requires an intermediary to register with any applicable self-regulatory organization (''SRO''), as defined in Exchange Act Section 3(a)(26).[321] Exchange Act Section 3(h)(1)(B) separately requires, as a condition of the exemption from broker registration, a funding portal to be a member of a national securities association that is registered with the Commission under Exchange Act Section 15A. The proposed rules would implement these provisions by requiring an intermediary in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) to be a member of FINRA or any other national securities association registered under Exchange Act Section 15A.[322] Today, FINRA is the only registered national securities association.

One commenter generally objected to the requirement for an intermediary to be a member of a registered national securities association.[323] As we noted above, the statute clearly requires a funding portal to be a member of a registered national securities association. Likewise, under Section 15(b)(8) of the Exchange Act, a broker-dealer that is engaged in crowdfunding activities must be a member of a national securities association.[324] We believe that requiring intermediary membership in a registered national securities association should help to ensure consistent regulation of intermediaries with fewer opportunities for regulatory gaps. In regulating broker-dealers that effect securities transactions with members of the public, FINRA has the most members and is responsible for conducting broker-dealer examinations of its members, mandating disclosures by its members, writing rules governing the conduct of its members and associated persons[325] and informing and educating the investing public.[326] FINRA investigates and brings enforcement actions against FINRA members and their associated persons who are suspected of violating its rules and the federal securities laws.[327] While FINRA has primary responsibility for examining its members,[328] the Commission staff generally examines broker-dealers if specific firm or industry risks have been identified or when fraud and rule violations may have occurred. Because the statute requires a national securities association to write rules expressly for funding

[313] *See* proposed Rule 300(a)(1) of Regulation Crowdfunding.

[314] *See* Commonwealth of Massachusetts Letter. *See also* Schwartz Letter (stating that the registration document should be made public because it would likely include many relevant disclosures, which would make it possible for the intermediary to file a single document to satisfy both the registration and disclosure requirements).

[315] *See* FINRA, note 142.

[316] *See* discussion in Section II.D.1 below.

[317] *See* Loofbourrow Letter.

[318] *See* ABA Letter 1.

[319] *See* 17 CFR 240.3b–16 (subject to the exceptions provided in part (b) of the rule, an organization, association or group of persons would generally be considered a market place or facility for bringing together purchasers and sellers of securities or for otherwise performing, with respect to securities, the functions commonly performed by a stock exchange, ''if such organization, association, or group of persons (1) Brings together the orders for securities of multiple buyers and sellers; and (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.'').

[320] *See* Section II.C.1 above.

[321] 15 U.S.C. 78c(a)(26). Exchange Act Section 3(a)(26) defines an ''SRO'' to mean ''any national securities exchange, registered securities association, or registered clearing agency, or (solely for the purposes of [S]ections [19(b), 19(c), and 23 of the Exchange Act]) the Municipal Securities Rulemaking Board established by [S]ection [15B of the Exchange Act.]'' *Id.*

[322] *See* proposed Rule 300(a)(2) of Regulation Crowdfunding. We have proposed definitions for the terms ''intermediary'' and ''SRO'' in proposed Rule 300(c)(3) and 300(c)(5) of Regulation Crowdfunding, respectively. Intermediary would mean a broker registered under Section 15(b) of the Exchange Act or a funding portal registered under proposed Rule 400 and would include, where relevant, an associated person of the registered broker or registered funding portal. SRO is proposed to have the same meaning as in Section 36(a)(26) of the Exchange Act. *See also* Section II.D.1 below for a discussion regarding proposed Rule 400 of Regulation Crowdfunding, which addresses registration requirements for funding portals.

[323] *See* Priore Letter.

[324] The statute also permits brokers-dealers to be members of a national securities exchange if the broker-dealer effects transactions in securities solely on that exchange.

[325] 15 U.S.C. 78*o*–3.

[326] FINRA, Inc., *http://www.finra.org/AboutFINRA/P125239* (last visited Oct. 15, 2012).

[327] *See, e.g.,* 15 U.S.C. 78*o*–3(b)(2); Testimony Before the Senate Subcommittee on Securities, Insurance, and Investment Committee on Banking, Housing, and Urban Affairs, 111th Cong. 8 (2010) (testimony of Stephen Luparello, Vice Chairman, FINRA).

[328] 15 U.S.C. 78*o*–3.

portals,[329] we anticipate that funding portals would be subjected to requirements targeted to their limited business model and not the more comprehensive requirements applicable to brokers. We anticipate that the regulatory framework FINRA creates for funding portals would play an important role in the oversight of these entities and, through the information that FINRA shares with the Commission, the Commission's ability to effectively regulate registered funding portals' activities.[330]

In response to commenters' requests that we clarify the applicable SRO for crowdfunding intermediaries, and to address any confusion about which entity or entities may serve as an SRO for crowdfunding brokers and funding portals, we are expressly identifying FINRA as a registered national securities association within the meaning of the statute.[331] While FINRA currently is the only registered national securities association, we are not foreclosing the possibility that another national securities association could register with us in the future. In that event, the proposed rule would permit funding portals to become members of the new association (should one become established in the future) instead of, or in addition to, FINRA.[332]

FINRA currently provides licensing and qualification requirements for associated persons of brokers. While we are not proposing any such requirement for persons associated with a funding portal, FINRA (or any other registered national securities association) could propose such requirements, as well as requirements dealing with supervision of funding portal personnel and appropriate compliance structures.[333] FINRA, like all SROs, is required to file all proposed rules with us under Exchange Act Section 19(b)[334] and Rule 19b–4.[335] In general, the Commission reviews proposed SRO rules and rule changes, publishes them for comment, approves or disapproves them, or the rules become effective immediately or by operation of law.

Request for Comment

118. We have named FINRA expressly in the proposed rules as an applicable registered national securities association for crowdfunding intermediaries. Is this helpful? Is this appropriate? Why or why not? Are there other entities considering applying to become registered national securities associations?

119. The proposed rules would require that an intermediary be a member of FINRA or of any other applicable national securities association. Is this an appropriate approach? At present, FINRA is the only registered national securities association. If we were in the future to approve the registration of another national securities association under Exchange Act Section 15A, would it be appropriate for us to require membership in both the existing and new association? Why or why not?

120. No intermediary can engage in crowdfunding activities without being registered with the Commission and becoming a member of FINRA or another registered national securities association. We recognize that while there is an established framework for brokers to register with the Commission and become members of FINRA, no such framework is yet in place for funding portals. We do not intend to create a regulatory imbalance that would unduly favor either brokers or funding portals.[336] Are there steps we should take to ensure that we do not create a regulatory imbalance?[337] Please explain.

121. The proposed rules do not independently establish licensing or other qualification requirements for intermediaries and their associated persons. The applicable registered national securities associations may or may not seek to impose such requirements. Should the Commission consider establishing these requirements? Should the Commission consider establishing requirements only if the associations do not? Would licensing or other qualifications for intermediaries and their associated persons be necessary, for example, to provide assurances that those persons are sufficiently knowledgeable and qualified to operate a funding portal? Why or why not? If so, what types of licensing or other qualifications should we consider?

b. Financial Interests

Exchange Act Section 4A(a)(11) requires an intermediary to prohibit its directors, officers or partners (or any person occupying a similar status or performing a similar function) from having any financial interest in an issuer using its services. The proposed rules would implement this prohibition by importing the language of the statute, and also by extending this prohibition to the intermediary itself. The proposed rules would add that these persons are not only prohibited from having any financial interest in an issuer using its services, but also would specifically be prohibited from receiving a financial interest in the issuer as compensation for services provided to, or for the benefit of, the issuer, in connection with the offer and sale of its securities.[338] The proposed rules would interpret ''any financial interest in an issuer,'' for purposes of Securities Act Section 4A(a)(11), to mean a direct or indirect ownership of, or economic interest in, any class of the issuer's securities.

One commenter sought clarification of whether Section 4A(a)(11) prohibits an intermediary—as an entity—from accepting equity from an issuer as compensation for its services.[339] In the commenter's view, Section 4A(a)(11) should be interpreted as prohibiting an intermediary from having a financial interest in an issuer only at the time of the offering and not thereafter. Another commenter stated that permitting a funding portal to have a financial interest in an issuer would align the funding portal's interests with those of

[329] *See* Exchange Act Section 3(h)(2) [15 U.S.C. 78c(h)(2)].

[330] *Id.*

[331] *See* NCA Letter; NSBA Letter.

[332] For requirements to register as a national securities association, *see* Exchange Act Section 15A [15 U.S.C. 78*o*–3].

[333] Exchange Act Section 15(b)(7) (15 U.S.C. 78*o*(b)(7)) requires that natural persons associated with brokers and dealers that are registered under Exchange Act Section 15(a)(1) (15 U.S.C. 78*o*(a)(1)) meet such standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest. The Commission historically has not exercised this authority but instead has relied on and deferred to the ''substantive content of the SROs' entry requirements imposed on securities personnel in the various qualification categories.'' *See Requirement of Broker-Dealers to Comply with SRO Qualification Standards,* Release No. 34–32261 (May 4, 1993). *See also* Sections II.D.1 and II.D.2 below for a discussion regarding proposed Rules 400 and 401 of Regulation Crowdfunding.

[334] 15 U.S.C. 78s(b).

[335] 17 CFR 240.19b–4.

[336] We note, however, that a registered broker could nonetheless have a competitive advantage to the extent it would be able to provide a wider range of services than a registered funding portal could provide in connection with crowdfunding transactions made in reliance on Section 4(a)(6). Unlike a funding portal, a registered broker-dealer could make recommendations, engage in solicitations and handle investor funds and securities. In addition, a registered broker-dealer, but not a funding portal, could potentially facilitate a secondary market for securities sold pursuant to Section 4(a)(6). *See* Exchange Act Section 3(a)(80) [15 U.S.C. 78c(a)(80)] (providing that a funding portal may act as an intermediary solely in securities transactions effected pursuant to Securities Act Section 4(a)(6), which are offerings by issuers and not resales).

[337] *See* NCA Letter (stating that registered brokers should not be permitted to engage in crowdfunding activities until funding portals also become registered with, and members of, SROs).

[338] *See* proposed Rule 300(b) of Regulation Crowdfunding.

[339] *See* NCA Letter.

potential investors and that full disclosure of any financial interest should quell any potential concerns.[340] Another commenter stated that Section 4A(a)(11) does not expressly prohibit an intermediary, as an entity, from having a financial interest in an issuer and that this should be permitted under certain circumstances.[341]

We believe the prohibition in Section 4A(a)(11) is designed to protect investors from the conflicts of interest that may arise when the persons facilitating a crowdfunding transaction have a financial stake in the outcome. The proposed rules would extend the prohibition on holding a financial interest to the intermediary itself,[342] because we believe that the same concerns apply to the intermediary as to its directors, officers or partners (or any person occupying a similar status or performing a similar function). The existence of a financial interest in an issuer may create an incentive to advance that issuer's fundraising efforts over those of other issuers, which could potentially adversely affect investors. For similar reasons, the proposed rules also would prohibit receipt of a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.[343] The proposed rules would define ''financial interest in an issuer'' to mean a direct or indirect ownership of, or economic interest in, any class of the securities of an issuer.[344]

As discussed above, one commenter suggested that an investor's and intermediary's interests may be aligned if an intermediary were allowed to take a financial interest in an issuer. We are concerned that the promise of a financial stake in the outcome could give an intermediary an incentive to ensure the success of its own investment in the issuer, to the disadvantage of investors and other issuers using the intermediary's platform, particularly if the financial interest is provided to the intermediary on different terms than to other investors.

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122. Should we permit an intermediary to receive a financial interest in an issuer as compensation for the services that it provides to the issuer? Why or why not? If we were to permit this arrangement, the proposed rules on disclosure requirements for issuers would require the arrangement to be disclosed to investors in the offering material. Are there other conditions that we should require? If so, please identify those conditions and explain.

123. If an intermediary receives a financial interest in an issuer, should it be permitted to provide future services as long as it retains the interest? Why or why not?

124. One commenter suggested that an intermediary should be able to receive a financial interest under the same terms as other investors participating in an offering made in reliance on Section 4(a)(6).[345] We request comment on this suggestion. How could an intermediary address potential conflicts of interest that may arise from this practice? Would disclosure of the arrangement be sufficient? Please explain.

125. The proposed rules define ''financial interest in an issuer,'' for purposes of Securities Act Section 4A(a)(11), to mean a direct or indirect ownership of, or economic interest in, any class of the issuer's securities. Should we define the term more broadly to include other potential forms of a financial interest? For example, should the term include a contract between an intermediary and an issuer or the issuer's directors, officers or partners (or any person occupying a similar status or performing a similar function), for the intermediary to provide ancillary or consulting services to the issuer after the offering? Should it include an arrangement under which the intermediary is a creditor of an issuer? Should it include any carried interest or other arrangement that provides the intermediary or its associated persons with an interest in the financial or operating success of the issuer, other than fixed or flat-rate fees for services performed? Should any other interests or arrangements be specified in the term ''financial interest in an issuer?'' If so, what are they and what concerns do they raise?

126. In light of the reasons for the prohibition, should there be a *de minimis* exception? Why or why not? If so, what would be an appropriate *de minimis* amount? For example, would a one percent holding be an appropriate amount? Would another amount be more appropriate? Please explain. Should there be disclosure requirements for any *de minimis* exception? Why or why not?

127. Should we impose any other requirements or prohibitions on intermediaries? If so, what requirements or prohibitions and why?

3. Measures To Reduce Risk of Fraud

Securities Act Section 4A(a)(5) requires an intermediary to ''take such measures to reduce the risk of fraud with respect to [transactions made in reliance on Section 4(a)(6)], as established by the Commission, by rule, including obtaining a background and securities enforcement regulatory history check on each officer, director, and person holding more than 20 percent of the outstanding equity of every issuer whose securities are offered by such person.'' The proposed rules would implement this provision by requiring an intermediary to have a reasonable basis for believing that the issuer is in compliance with relevant regulations and has established means to keep accurate records of holders of the securities it offers, and by requiring that the intermediary deny access if it believes the issuer or its offering would present a potential for fraud.[346]

Specifically, the proposed rules would require an intermediary to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6), through the intermediary's platform, complies with the requirements in Securities Act Section 4A(b) and the related requirements in Regulation

[340] *See* Dex Offshore Letter 1. *See also* Dex Offshore Letter 2 (stating that allowing funding portals to have an equity interest in an issuer would align the funding portals with investors, much like venture capital or private equity models, and that transparent disclosure would quell any concerns related to portals maintaining equity interests in issuers).

[341] *See* EarlyShares Letter 2 (stating that the following principles should govern a funding portal's financial interest in an issuer: first, to prevent any potential unfair advantage, an intermediary should only be able to invest on the same terms under which the crowd invests; second, any material nonpublic information that the intermediary (or any person acting on behalf of the intermediary) possessed prior to and/or after taking a financial interest in an issuer must be disclosed on the platform in a secure manner, consistent with the disclosure of other material nonpublic information that investors will receive through the issuer's profile page on an intermediary's platform; third, because under Securities Act Section 4A(e), an intermediary will be bound by the same one-year restriction on sales period as any other investor, there would be no risk that investors would be misled by a ''false start'' or ''pump-and-dump'' scheme; and finally, an intermediary's interest should remain anonymous throughout the investment campaign, to avoid having the intermediary's interest be considered ''investment advice or recommendations,'' in violation of the prohibitions in the definition of funding portal).

[342] *See* proposed Rule 300(b) of Regulation Crowdfunding. *See also* Securities Act Section 4A(a)(12) (granting us discretionary authority to include other requirements on intermediaries for the protection of investors and the public interest).

[343] *See id.*

[344] See proposed Rule 300(b) of Regulation Crowdfunding.

[345] *See* EarlyShares Letter 2.

[346] *See* proposed Rule 301 of Regulation Crowdfunding.

Crowdfunding.[347] While an issuer has an independent obligation to comply with these requirements, we believe it would help to reduce the risk of fraud if an intermediary were to also have an obligation to have a reasonable basis to believe that the issuer is in compliance.[348] The proposed rules would permit intermediaries to reasonably rely on representations of the issuer, absent knowledge or other information or indications that the representations are not true. While we do not propose to specify particular actions an intermediary must take in satisfying this requirement, we anticipate that in the course of its interactions with potential issuers, an intermediary may determine whether it could in fact reasonably rely on an issuer's representations and have a reasonable basis to believe the issuer is in compliance.

The proposed rules also would require an intermediary to have a reasonable basis for believing that an issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform.[349] The ability to keep track of the ownership of an issuer's securities is necessary to protect investors and critical for maintaining the integrity of securities transactions made in reliance on Section 4(a)(6), both with respect to the initial offering and any subsequent transfers of the securities. The statute does not assign responsibility in this regard but intermediaries would be well-positioned to make this determination, given that they would be interacting with the issuer, and particularly if they are advising the issuer to some extent about the offering.[350] One commenter stated that a direct registration system provides the best solution to policing transfers at a low cost and that, to the extent physical certificates are issued, they should include legends similar to those required for restricted securities.[351]

Another commenter suggested that the Commission should require the use of registered transfer agents, which are already subject to SEC regulations and examinations, to maintain records of share ownership and transfers in connection with crowdfunding transactions.[352] This commenter stated that small issuers may not have the resources to properly execute the routine services that registered transfer agents provide, including procedures to: record and balance registered shareowner positions; follow shareholder instructions (and retain records of the instruction) to change an address or transfer their interests as a result of death, divorce or sale (including signature guarantees where necessary); escheat unclaimed assets under state laws; or address lost or stolen certificates.

We are not proposing to require a particular form or method of recordkeeping of securities, nor are we proposing to require that an issuer use a transfer agent or any other third party. We recognize the importance of accurate recordkeeping for investors and issuers, and that the failure to accurately record or maintain shareholder records of an issuer, or to prevent fraudulent transfers, can have significant negative impacts for both investors and issuers.[353] Among other things, investors without accurate records of their ownership of shares can find it difficult to prove such ownership in connection with a sale of their shares or execution of a corporate transaction. We believe that accurate recordkeeping can be accomplished by diligent issuers or through a variety of third parties. Accordingly, under the proposed rules, the recordkeeping function may be provided by the issuer, a broker, a transfer agent or some other (registered or unregistered) person.[354] In certain business models, for example, it may be possible for other regulated entities, such as banks, to provide this function.[355]

Requiring a direct registration system to monitor transfers could create additional costs to implement that we have not required in connection with any types of securities offerings, and thus we are not proposing to require it here. Similarly, we are not proposing to require the use of a registered transfer agent. While requiring a registered transfer agent to be involved after the offering could introduce a regulated entity with experience in maintaining accurate shareholder records, a transfer agent is not necessary for accurate recordkeeping. Issuers and other third parties can also be well-positioned to keep accurate records of the holders of the securities an issuer would offer and sell through an intermediary's platform.[356]

In satisfying this requirement that an intermediary have a reasonable basis to believe that an issuer has established means to keep accurate records of the securities it would offer and sell through the intermediary's platform, the intermediary may rely on an issuer's representations concerning the means it has established, unless the intermediary has reason to question the reliability of the representations.[357] To keep accurate records, an issuer may need to have established means to perform a range of functions with respect to shareholder records. The precise scope of the needed functions will depend on the nature of the issuer and its securities. Such functions could include, for example, the ability to (1) monitor the issuance of the securities the issuer would offer and sell through the intermediary's platform, (2) maintain a master security holder list reflecting the owners of those securities, (3) maintain a transfer journal or other such log recording any transfer of ownership, (4) effect the exchange or conversion of any applicable securities, (5) maintain a control book demonstrating the historical registration of those securities, and (6) countersign or legend physical certificates of those securities. For some issuers, not all of these functions may be needed.

There are a number of ways by which an issuer could demonstrate or represent that it has established the necessary recordkeeping means. The issuer itself may have capabilities to maintain accurate records of its

[347] *See* proposed Rule 301(a) of Regulation Crowdfunding.

[348] *See* Section II.E.5 below for a discussion relating to intermediaries' potential statutory liability for statements made by issuers and intermediaries' policies and procedures. Proposed Rule 403(a) of Regulation Crowdfunding would require funding portals to have policies and procedures designed to achieve compliance with federal securities laws, while intermediaries that are brokers would be subject to FINRA rules requiring similar policies and procedures. *See* discussion in Section II.D.4 below.

[349] *See* proposed Rule 301(b) of Regulation Crowdfunding.

[350] *See* discussion in Section II.D.3 below relating to proposed Rule 402(b)(5) of Regulation Crowdfunding.

[351] *See* RocketHub Letter 1. *See also* STA Letter.

[352] *See* STA Letter.

[353] *See, e.g.,* STA Letter.

[354] An intermediary that is a funding portal could not provide these services, however, because by statute, it cannot ''hold, manage, possess, or otherwise handle investor funds or securities.'' *See* Exchange Act Section 3(a)(80)(D) [15 U.S.C. 78c(a)(80)].

[355] *See* City First Letter (indicating that there was interest in leveraging resources of Community Development Financial Institutions, which are certified by the U.S. Department of Treasury and include community development banks, credit unions, loan funds, and venture capital funds, with crowdfunded capital).

[356] Transfer agent registration is required with respect to securities registered under Exchange Act Section 12 (15 U.S.C. 78*l*). Because securities issued pursuant to a transaction relying on Section 4(a)(6) will not be registered under Exchange Act Section 12, as explained above, we are not proposing to require the use of transfer agents on the transfers of these securities. Nevertheless, issuers relying on Section 4(a)(6) could choose to engage a registered transfer agent to provide these services. *See* Exchange Act Section 17A(c)(1) [15 U.S.C. 78q–1]. *See also id.*

[357] *See* proposed Rule 301(b) of Regulation Crowdfunding.

securities and, as noted above, may represent such capabilities to the intermediary. The intermediary also may be able to establish a reasonable belief, for example, if the issuer has engaged a broker, transfer agent, or other third party that can provide the requisite recordkeeping services, including a third party providing such services tailored to crowdfunding issuers.

The proposed rules would require an intermediary to deny access to its platform, if the intermediary has a reasonable basis for believing that an issuer, or any of its officers, directors (or any person occupying a similar status or performing a similar function) or 20 Percent Beneficial Owners, is subject to a disqualification under the proposed rules or if the intermediary believes that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection.[358] The rules would require an intermediary to conduct a background and securities enforcement regulatory history check on each issuer whose securities are to be offered by the intermediary, as well as on each of its officers, directors (or any person occupying a similar status or performing a similar function) and 20 Percent Beneficial Owners. While the statute requires that these checks be conducted on persons holding *more than* 20 percent of the outstanding equity of the issuer, the proposed rules would extend this requirement to apply to the 20 Percent Beneficial Owners. This proposed requirement is consistent with the issuer disclosure requirements and with the issuer disqualification provisions.[359] Using the same standard here would be consistent with and reinforce the disclosure requirements and disqualification provisions applicable to issuers and would provide investors with protections and additional comfort when making investment decisions. At this time, we believe that requiring these background checks would be sufficient to meet the aims of Section 4A(a)(5) without imposing an undue burden, which could in turn discourage the use of the exemption provided in Section 4(a)(6).

A number of commenters requested guidance on the acceptable scope of background and securities enforcement regulatory history checks that an intermediary would be required to conduct.[360] One commenter suggested that the background check should consist of: A review of credit reports, verification of necessary business or professional licenses, evidence of corporate good standing, uniform commercial code checks and a CRD [361] snapshot report.[362] Another stated that the scope of the background and securities enforcement regulatory history check should be commensurate with the size of the transaction and that we should establish a minimum level of diligence that an intermediary must undertake to promulgate an effective mechanism against fraud.[363] The commenter further stated that such minimum level should be below that required of registered broker-dealers.[364] Other commenters requested guidance on the actions that an intermediary should take with respect to information uncovered during a background check.[365]

We are not proposing to establish specific procedures for intermediaries to follow to reduce the risk of fraud beyond conducting the prescribed background and securities enforcement regulatory history checks. We believe that this proposed approach would allow an intermediary to use its experience and judgment, as well as its concern for the reputational integrity of its platform and crowdfunding pursuant to Section 4(a)(6) in general, to design systems and processes to help reduce the risk of fraud in securities-based crowdfunding. In this regard, the proposed rules would require an intermediary to deny access to an issuer if it has information that is not necessarily the basis for a disqualification under proposed rules, but that the intermediary nevertheless believes presents the potential for fraud or otherwise raises concerns regarding investor protection.[366] For this particular proposed requirement to deny access, the intermediary would not be required to have a reasonable basis for its belief. This is because we believe it is important to provide intermediaries discretion in taking steps to reduce the risk of fraud as Congress intended, which would strengthen investor protection. The proposed rules also require that if this information becomes known to the intermediary after it has granted the issuer access to its platform, the intermediary must promptly remove the offering from its platform, cancel the offering and return to investors any funds they may have committed. Under the proposed rules, an intermediary would also be required to deny access to an issuer if it believes that it is unable to adequately or effectively assess the risk of fraud of the issuer or its potential offering. For example, if certain officers of the issuer reside in a jurisdiction where background checks and securities enforcement regulatory history checks are not readily available to the intermediary, the intermediary may determine that it is unable to assess the risk of fraud of the issuer, and thus must deny the issuer access to its platform.

Some commenters stated that background checks could help reduce fraud if intermediaries were required to prominently display the results of the background checks on their platforms.[367] We believe that requiring intermediaries to conduct the checks and deny access to persons subject to disqualification satisfies the statutory requirement and achieves the underlying goal of the provision, which is to restrict the ability of certain parties to use the exemption. We do not believe it would be necessary to make publicly available the results of the background

[358] *See* proposed Rule 301(c) of Regulation Crowdfunding.

[359] *See* proposed Rules 201 and 503 of Regulation Crowdfunding, as well as the discussion in Section II.B.1 above and Section II.E.6 below.

[360] *See* CompTIA Letter; NASAA Letter; CrowdFund Connect Letter.

[361] CRD is a central licensing and registration system for the U.S. securities industry and its regulators. It includes a computerized database of registration records, as well as qualification, employment and complaint histories.

[362] *See* NASAA Letter (stating that these types of checks and reviews are necessary to ensure bad actors are not permitted to raise money in lightly regulated public offerings). *Compare* RocketHub Letter 1 (stating that intermediaries should query commonly-used databases for criminal background checks, bankruptcy filings and tax liens, as well as cross reference against the Department of Treasury's (''Treasury'') Office of Foreign Asset Control sanctions lists and Specially Designated Nationals and Blocked Persons lists).

[363] *See* CFIRA Letter 2 (stating that because there is no mandated infrastructure that intermediaries are required to use, each intermediary should utilize an infrastructure that incorporates some type of fraud deterrence and fraud detection system, whether proprietary or licensed through a third party; that, in order to deter fraud, funding portals should have a video interface ''whereby each issuer is required to give a short presentation on their business which is capable of being viewed live and saved for later viewing at any time by a potential investor;'' and that in terms of detecting fraud, we should require intermediaries to build certain fraud detection systems into the functionality of their platforms).

[364] *See id.*

[365] *See* NSBA Letter; Arctic Island Letter.

[366] For example, in conducting the background checks on the officers and directors of an issuer, an intermediary may learn that an officer or director misrepresented his or her experience or background. In this situation, an intermediary may determine that the misrepresentation was intentional or material (*e.g.,* it was not the result of an inadvertent clerical error) and is an indication that an offering by the issuer would present potential for fraud or otherwise raises concerns regarding investor protection. The intermediary would then be required to deny access to its platform to the issuer.

[367] *See* Arctic Island Letter; The Motley Fool Letter (stating the information should be displayed insofar as it bears on the honesty of the individual checked).

checks, especially as such a requirement could add to the cost of administration and could expose the individuals in question to harm, for example, if there were errors in the information made publicly available. Therefore, we are not proposing to require intermediaries to make publicly available the results of background checks. Other commenters suggested creating an online database of securities law violators,[368] or otherwise making certain information available so that investors could conduct their own background checks on officers and directors of an issuer,[369] which could help lower costs on intermediaries and, indirectly, on issuers, associated with conducting an offering pursuant to Section 4(a)(6). We are not persuaded at this time that the administrative costs of posting the information, which the intermediary might not be able to verify, would be justified.

Some commenters expressed concern over the costs and burdens associated with conducting background and securities enforcement regulatory history checks.[370] One commenter stated that it is important to control the expense of background checks to avoid making the cost of raising capital prohibitive to the issuer.[371] While we are mindful of the costs associated with conducting these checks, the statutory requirement is clear. To help mitigate the costs, however, the proposed rules provide intermediaries with flexibility in how they would meet this requirement, while still helping to reduce the risk of fraud.

We anticipate that an intermediary may use the services of a third party to gather the information to conduct the required background and regulatory checks on issuers and their control persons.[372] The intermediary, of course, would remain responsible for compliance with the requirements of Section 4A(a)(5) and proposed Rule 301(c).[373]

[368] *See* CrowdFund Connect Letter.

[369] *See* Cera Technology Letter.

[370] *See* CrowdFund Connect Letter; Cera Technology Letter; Schwartz Letter (stating that the Commission should not add to the costs of background and securities enforcement regulatory history checks by tacking on additional antifraud measures).

[371] *See* CrowdFund Connect Letter (further stating that the requirement should be worded in a way ''as to be compatible with the numerous online sites that currently provide criminal background checks and that only felonies be reported'').

[372] *See* discussion in Sections III.B.4 and IV.C below.

[373] An intermediary should investigate and understand the procedures used by the third party to determine the reasonableness of the reliance on a third party. Furthermore, depending on how an arrangement is structured or the services provided, a third-party service provider could come within the meaning of the term associated person of a broker or dealer in Exchange Act Section 3(a)(18) (15 U.S.C. 78c(a)(18)). *See also* National Association of Securities Dealers (''NASD'' n/k/a FINRA), *Outsourcing,* Notice to Members 05–48 (July 2005), *available at http://www.finra.org/Industry/Regulation/Notices/2005/p014736.*

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128. We are not proposing to require that an issuer relying on Section 4(a)(6) engage a transfer agent due, in part, to the potential costs we believe such a requirement would impose on issuers. What would be the potential benefits and costs associated with having a regulated transfer agent for small issuers? Are there other less costly means by which an issuer could rely on a qualified third party to assist with the recordkeeping related to its securities?

129. The proposed rules incorporate a ''reasonable basis'' standard for intermediaries to determine whether issuers comply with the requirements in Securities Act Section 4A(b) and the related requirements of Regulation Crowdfunding, as well as for satisfying the requirement that the issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the its platform.[374] Is a ''reasonable basis'' the appropriate standard for intermediaries making such determinations? Why or why not? Is it appropriate for one determination but not the other? If so, please explain which one and why. What other standard would be more appropriate, and why? What circumstances in the crowdfunding context should not be considered to constitute a reasonable basis? Should we permit an intermediary to reasonably rely on the representation of an issuer with respect to one or both determinations?

130. The proposed rules incorporate a ''reasonable basis'' standard for intermediaries to determine whether an issuer would be subject to a disqualification. In contrast, there is no reasonableness standard for intermediaries' requirement under the proposed rules to deny access to an issuer if it believes the issuer or the offering presents potential for fraud or otherwise raises concerns regarding investor protection. Is it appropriate to have these two different standards under the proposed rules? Why or why not? If one of these standards is not appropriate, please explain what would be a more appropriate standard and why.

131. The proposed rules would implement Section 4A(a)(5) by requiring the intermediary to conduct a background and securities enforcement regulatory history check aimed at determining whether an issuer or any of its officers, directors (or any person occupying a similar status or performing a similar function) or 20 Percent Beneficial Owners is subject to a disqualification, presents potential for fraud or otherwise raises concerns regarding investor protection. Is this approach appropriate? Why or why not? If not, why not? Would another approach be more appropriate? Why or why not?

132. Should we require intermediaries to make the results of the proposed background checks publicly available? Why or why not? Would doing so raise privacy concerns?

133. Should we specify the steps that an intermediary must take in obtaining background and securities enforcement regulatory history checks on the issuer and its officers, directors (or any person occupying a similar status or performing a similar function) and 20 Percent Beneficial Owners? Should we require, for example, an intermediary to check publicly-available databases, such as FINRA's BrokerCheck and the Commission's Investment Adviser Public Disclosure program? Why or why not? Are there third parties who would be in a position to provide these types of services? Please discuss.

134. Should we require intermediaries to conduct specific checks or other steps (such as a review of credit reports, verification of necessary business or professional licenses, evidence of corporate good standing, Uniform Commercial Code checks or a CRD snapshot report)? Why or why not? Separately, should we specify a minimum or baseline level of due diligence to help establish a reasonable basis? Why or why not? If so, what should that level include? For instance, should it include a review or a verification of certain publicly available information about an issuer and its officers, directors (or any person occupying a similar status or performing a similar function) and 20 Percent Beneficial Owners? Should it include searches related or tailored to their location or place of incorporation, assets including real property and liens on those assets? Are there items it should or should not include? Please explain.

135. Are there resources available to an intermediary that enable it to collect the information necessary for making a determination regarding disqualification or the potential for fraud or potential concerns as to investor protection? If so, which resources? Are there aspects of the proposed issuer disqualification rule that would make it difficult for an

[374] *See* proposed Rule 301(a) of Regulation Crowdfunding.

intermediary to assess whether the issuer is subject to a disqualification? If so, please explain. Are there additional events or factors relevant to reducing the risk of fraud that intermediaries should be required to check? Please explain.

136. Section 4A(a)(5) authorizes the Commission to specify measures to reduce the risk of fraud, in addition to background checks. Are there other risks of fraud which are not contemplated by the proposed rules? Are there any additional measures that we should specifically require? Please discuss any suggested measures, and explain. For example, should we require intermediaries to monitor investment commitments and cancellations or take any other actions to detect potential attempts to promote an issuer's securities? If so, which actions and why?

137. Should the intermediary be required to report to the Commission (or another agency) issuers that are denied access? Why or why not?

4. Account Opening

Under the proposed rules, an investor seeking to invest in an offering conducted in reliance on Section 4(a)(6) would need to open an account with an intermediary and provide consent to electronic delivery of materials. The intermediary also would be required to deliver to the investor educational materials, as discussed below.

a. Accounts and Electronic Delivery

The proposed rules would prohibit an intermediary or its associated persons from accepting an investment commitment unless the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials.[375] We are not proposing to specify any particular type or form of information that an intermediary must obtain from an investor in order to open an account; however, we anticipate that at a minimum the intermediary would obtain basic identifying and contact information, such as full name, physical address and email address.[376] Because we believe that Congress contemplated that crowdfunding would, by its very nature, occur exclusively through electronic media, the proposed rules require that investors consent to electronic delivery.[377]

The proposed rules also would require an intermediary to provide all information it is required to provide under Subpart C, such as educational materials, notices and confirmations, through electronic means.[378] We also propose to require that, unless otherwise permitted, an intermediary must provide the information through an electronic message that contains the information, through an electronic message that includes a specific link to the information as posted on the intermediary's platform, or through an electronic message that provides notice of what the information is and that it is located on the intermediary's platform or on the issuer's Web site. The proposed rules would state that electronic messages include, but are not limited to, email messages. According to the proposed rule, for example, in complying with requirements to provide notices to investors under proposed Rule 304(b), the intermediary must provide those notices electronically to investors, such as through an email message containing or attaching the notice. With respect to the provision of issuer materials as required under proposed Rule 303(a), however, the proposed rule specifies that the intermediary must make the information publicly available on its platform. Therefore, the intermediary would only need to post the information on its platform in a manner complying with proposed Rule 303(a) and would not be required to send any electronic messages with regard to its posting.

We believe that requiring consent to electronic delivery of documents relating to the offering, and requiring that intermediaries provide information electronically, would facilitate the ability of the investor, intermediary and issuer to comply with, and act in a timely manner, with respect to certain proposed requirements of Regulation Crowdfunding (such as the requirement for investors to reconfirm investment commitments within five business days of receiving notice of material changes).[379] As such, under the proposed rules, offerings made in reliance on Section 4(a)(6) would be ''electronic-only,'' such that all information to be provided by intermediaries must be provided electronically, and investors would be permitted to participate only if they agree to accept electronic delivery of all documents in connection with the offering.[380]

Request for Comment

138. Should we specify the types of information that an intermediary must obtain from an investor as part of the account-opening process? If so, what information and why? How would this information differ from what intermediaries would be required to obtain to fulfill their anti-money laundering obligations?[381]

139. Should we permit any exceptions to the proposed requirements to obtain consent to electronic delivery? If so, why and under what circumstances? If an investor does not receive materials electronically, how would he or she be able to participate fully in an offering made in reliance on Section 4(a)(6)?

140. Are there any other means of providing information electronically by an intermediary that are not covered in the proposed rules but that should be covered? Are there any means proposed to be included that should be eliminated or modified? If so, what means are they? For example, should intermediaries be permitted to post information in an investor's account on its platform, without sending a notification that it is posted there? Why or why not? Should different types of information be required to be provided through different means? Please explain.

b. Educational Materials

Section 4A(a)(3) states that an intermediary must ''provide such disclosures, including disclosures related to risks and other investor education materials, as the Commission shall, by rule, determine appropriate,'' but it does not elaborate on the scope of

[375] *See* proposed Rule 302(a)(1) of Regulation Crowdfunding.

[376] Intermediaries also are subject to anti-money laundering obligations, including those relating to customer identification. *See* discussion in Section II.D.4 below regarding proposed Rule 403(b) of Regulation Crowdfunding.

[377] *See Use of Electronic Media,* note 60 (citing *Use of Electronic Media for Delivery Purposes,* Release No. 34–36345 (Oct. 6, 1995) [60 FR 53548, 53454 (Oct. 13, 1995)]).

[378] *See* proposed Rule 302(a)(2) of Regulation Crowdfunding.

[379] *See* discussion in Section II.C.6 below and proposed Rule 304(c) of Regulation Crowdfunding. We also note that, to the extent intermediaries are required to provide notices or other material to investors, it would not be sufficient for the intermediary simply to make the notice or material available for investors to access, such as by posting it on its platform or through social media sites; rather, the intermediary would need to deliver the notice or material to the investor, such as by email or other electronic delivery methods. *See Use of Electronic Media,* note 60 at 25853 (discussing the ''access equals delivery'' concept).

[380] *See* proposed Rule 100(a)(3) of Regulation Crowdfunding. *See also* discussion in Section II.A.4 above, particularly the text accompanying note 55, regarding the requirement that crowdfunding transactions made in reliance on Section 4(a)(6) be conducted exclusively through an intermediary's platform. *See also Use of Electronic Media,* note 60 (citing *Use of Electronic Media for Delivery Purposes,* Release No. 34–36345 [60 FR 53548, 53454 (Oct. 13, 1995)]).

[381] *See* Section II.D.4.b below for a discussion of the anti-money laundering provisions applicable to intermediaries.

this requirement. As described in further detail below, the proposed rules would require the intermediary to deliver to investors, at account opening, educational materials that are in plain language and otherwise designed to communicate effectively specified information. Intermediaries also would be required to make the current version of the educational materials available on their platforms and to make revised materials available to all investors before accepting any additional investment commitments or effecting any further transactions in securities offered and sold in reliance on Section 4(a)(6).[382]

The proposed rules would require the materials to include:

- The process for the offer, purchase and issuance of securities through the intermediary;
- the risks associated with investing in securities offered and sold in reliance on Section 4(a)(6);
- the types of securities that may be offered on the intermediary's platform and the risks associated with each type of security, including the risk of having limited voting power as a result of dilution;
- the restrictions on the resale of securities offered and sold in reliance on Section 4(a)(6);
- the types of information that an issuer is required to provide in annual reports, the frequency of the delivery of that information, and the possibility that the issuer's obligation to file annual reports may terminate in the future;
- the limitations on the amounts investors may invest, as set forth in Section 4(a)(6)(B);
- the circumstances in which the issuer may cancel an investment commitment;
- the limitations on an investor's right to cancel an investment commitment;
- the need for the investor to consider whether investing in a security offered and sold in reliance on Section 4(a)(6) is appropriate for him or her; and
- that following completion of an offering, there may or may not be any ongoing relationship between the issuer and intermediary.

The proposed disclosures relating to the risks of investing in securities offered and sold in reliance on Section 4(a)(6), investors' cancellation rights, resale restrictions and issuer reporting are generally drawn from the statutory requirements.[383] These items of information are basic terms, relevant to transactions conducted in reliance on Section 4(a)(6), of which all investors should be aware before making an investment commitment. The circumstances in which an investor can cancel an investment commitment and obtain a return of his or her funds are particularly important to an investor's understanding of the investment process. Information on resale restrictions could affect an investor's decision to consider any offerings made pursuant to Section 4(a)(6).

We are proposing to require intermediaries to provide educational material about the types of securities available for purchase on their platforms and the risks associated with each type of security, including the risk of having limited voting power as a result of dilution.[384] As one commenter noted, some forms of securities may have limited rights with respect to voting, input into management decisions or redemption, among others, and also may be subject to dilution.[385] Because we are not restricting the types of securities that an issuer may offer through Section 4(a)(6) transactions, this requirement would help investors understand the various types of securities that could be available on the platform and their associated risks.

We also are proposing to require intermediaries to provide educational material regarding the limitation on the amounts investors may invest pursuant to Section 4(a)(6)(B) and the proposed rules.[386] We believe it is important that investors are made aware of and understand the limits to which they would be subject, prior to making any investment commitments. As noted above, we are proposing to permit intermediaries to reasonably rely on investors' representations concerning compliance with the investment limitation requirements.[387] We believe providing these educational materials should enhance the accuracy of investor representations, because an investor may be less likely to inadvertently make an inaccurate representation that he or she complies with the investment limits after being presented with an explanation of what those limits are, how they apply and how they are calculated.

In addition, we are proposing to require that intermediaries provide, in the educational materials, a notice that the intermediary may or may not continue to have a relationship with the issuer following completion of the offering.[388] We believe that persons opening an account with an intermediary, for instance because they are interested in the offering of a particular issuer, could mistakenly assume that the intermediary will have an ongoing relationship with the issuer. Such persons also could assume that, following an offering conducted through the intermediary's platform through which they purchased securities, the intermediary would be the primary contact for investors wishing to obtain information about, or wishing to communicate with, the issuer or wishing to participate in secondary trading of the issuer's securities. Because intermediaries may not necessarily have an ongoing relationship with the issuer following an offering, and funding portals would not be permitted to be involved in secondary trading, we believe it would be helpful to require intermediaries to alert investors about this limitation the time they open accounts.

One commenter suggested that the user experience for investors engaging in crowdfunding transactions should be a ''painless process'' and that investors should be subject to mandatory investor education prior to investing.[389] Another commenter suggested that, in order to protect investors, intermediaries should be required to provide a glossary explaining each type of security available for purchase in each of the offerings on its portal.[390] We are proposing to require intermediaries to provide educational material about the types of securities available for purchase on their platforms and the risks associated with each type of security; however, in order to provide intermediaries with flexibility in how they present or format this information, we are not proposing to require that it be presented as a glossary. One commenter suggested that a warning on the front page of an issuer's offering materials should suffice for the

[382] *See* proposed Rule 302(b) of Regulation Crowdfunding.

[383] *See* Securities Act Sections 4A(a)(4), 4A(a)(7), 4A(e), and 4A(b)(4).

[384] *See* proposed Rule 302(b)(1)(ii) of Regulation Crowdfunding.

[385] *See* Commonwealth of Massachusetts Letter (stating that the investor education materials and other disclosures should make clear to investors the risks of their crowdfunding investments, including that investors may not have any meaningful voting power as minority shareholders and that their investment may not be readily liquid). *See also* 2012 SEC Government-Business Forum, note 29 (recommending that certain investor education materials, such as those relating to dilution, may need to be mandated by the Commission).

[386] *See* proposed Rule 100(a)(2) of Regulation Crowdfunding.

[387] *See* proposed Rule 303(b)(1) of Regulation Crowdfunding.

[388] *See* proposed Rule 302(b)(1)(viii) of Regulation Crowdfunding.

[389] *See* Vim Funding Letter.

[390] *See* CFIRA Letter 2.

purposes of Section 4A(a)(3).[391] We do not believe that a disclaimer in isolation would be sufficient information to satisfy the statutory educational requirement.[392]

Other commenters requested that the Commission prepare and make available investor educational material or model text for use by intermediaries.[393] Other commenters requested that the Commission clarify whether educational materials may be provided to investors through electronic means, such as through the Internet or email.[394] One commenter requested that intermediaries be given ''wide latitude'' to experiment with different methods of investor education.[395] We are not proposing to require a particular format or manner of presentation, other than the requirement that the materials be provided electronically.[396] Rather than requiring specific text or a particular format or presentation, we believe that the better approach is to provide each intermediary with sufficient flexibility to prepare educational materials in a manner reasonably designed to provide the required information, based on the types of offerings on the intermediary's platform and the types of investors drawn to its platform.[397] Under the proposed rules, the educational materials may be in any electronic format, including electronic and video format, that the intermediary determines is effective in communicating the contents of the educational material.[398]

Because the proposed rules require that the educational materials convey the specified pieces of information accurately, an intermediary would be required to update these materials over time as, for instance, the types of offerings on its platform change. For example, if an intermediary decides to expand the types of securities it offers through its platform, the intermediary would be required to update its educational materials. Similarly, an intermediary would be required to periodically review and update other aspects of its educational materials, such as the discussion of risk factors, as necessary. The proposed rules would require an intermediary to keep its educational materials accurate and thus current, which would require it to make the most current version of its educational materials available on its platform. In addition, to the extent an intermediary makes a material revision to its educational materials, it would be required to make the revised educational materials available to all investors before accepting any investment commitments.[399] We believe that this requirement is consistent with the Internet-based nature of crowdfunding. We also believe that this requirement would benefit investors, by helping to ensure that they have information about key aspects of investing through the intermediary's platform that may have changed since the last time they received the materials, prior to making investment commitments, as those key aspects could influence their investment decisions. Because these materials must be accurate, and thereby current, a change in the types of offerings conducted on an intermediary's platform would trigger an update. We believe requiring intermediaries to provide updated material on this basis, rather than at any regular intervals, should help to minimize the ongoing burden on intermediaries.

Request for Comment

141. Is the scope of information proposed to be required in an intermediary's educational materials appropriate? Why or why not? Is there other information that we should require an intermediary to provide as part of the educational materials? If so, what information and why?

142. Should any of the proposed requirements be modified or deleted, and if so, which requirements and why?

143. Should we prescribe the text or content of educational materials for intermediaries to use? Why or why not? Should we provide models that intermediaries could use? Why or why not?

144. Should we specifically prohibit certain types of electronic media from being used to communicate educational material? If so, which ones and why?

145. Should we require intermediaries to submit the educational materials to us or FINRA (or other applicable national securities association) for review? Why or why not? If we should require submission of materials, should we require submission before or after use, when they are first used, when the intermediary changes them or at some other point(s) in time? Please explain.

146. Should we require intermediaries to provide educational material at additional or different specified points in time, rather than only when the investor begins to open an account or make an investment commitment? Why or why not? If so, why would that be preferable to requiring updates on an as-needed basis? For example, should educational material be provided on a quarterly, semi-annual, or annual basis? Should this material be provided again to investors who have not logged onto or accessed an intermediary's platform for a specified period of time? Why or why not? If so, what should that period of time be?

c. Promoters

Section 4A(b)(3) provides that an issuer shall ''not compensate or commit to compensate, directly or indirectly, any person to promote its offerings through communication channels provided by a broker or funding portal, without taking such steps as the Commission shall, by rule, require to ensure that such person clearly discloses the receipt, past or prospective, of such compensation, upon each instance of such promotional communication.'' As discussed above, the proposed rules would include this prohibition.[400]

We also propose to require the intermediary to inform investors, at the account opening stage, that any person who promotes an issuer's offering for compensation, whether past or prospective, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the

[391] *See* InitialCrowdOffering Letter (stating that the following type of language should be used: ''you should purchase these shares only if you can afford a complete loss of your investment'').

[392] *See also* discussion in Section II.C.5.b below and proposed Rule 303(b)(2)(i) of Regulation Crowdfunding.

[393] *See, e.g.,* NASAA Letter (providing model language for use in investor education material and recommending that the material state that: (1) Investments in small businesses and start-up companies are often risky; (2) according to the U.S. Small Business Administration, half of all new businesses fail within five years; (3) because of these risks, investors should only invest if they can afford to lose the entire investment; and (4) an investor should not invest if the investor has an immediate need for the return of the funds). *See also* Tri Valley Law Letter; NSBA Letter. *But see* 2012 SEC Government-Business Forum, note 29 (recommending that while some investor education materials may need to be mandated by the Commission, the industry should work together to standardize educational materials).

[394] *See* RocketHub Letter 1; Spinrad Letter 1.

[395] *See* Schwartz Letter.

[396] *See* proposed Rule 302(a)(2) of Regulation Crowdfunding and discussion in Section II.C.4.a above.

[397] *See* 2012 SEC Government-Business Forum, note 29 (recommending that the market for transactions in reliance on Section 4(a)(6) should be permitted to develop best practices wherever possible).

[398] As discussed in Section II.C.3 above, proposed Rule 302(a) of Regulation Crowdfunding would require that an intermediary obtain an investor's consent to such electronic delivery.

[399] Pursuant to proposed Rule 303(b)(2)(i) of Regulation Crowdfunding, the intermediary would be required to obtain, from each investor, a representation that the investor has reviewed these educational materials before accepting an investment commitment from the investor.

[400] *See* proposed Rule 205 of Regulation Crowdfunding and the discussion in Section II.B.5 above.

issuer on the intermediary's platform, must clearly disclose in all communications on the platform the receipt of the compensation and the fact that he or she is engaging in promotional activities on behalf of the issuer.[401] We believe that requiring intermediaries to inform investors about these disclosure obligations at the outset of their relationship should help to ensure and monitor issuers' compliance with Section 4A(b)(3) and the proposed rules, as it would alert investors that information about the participation of issuers or representatives of issuers would have to be disclosed at a later time. Promoters also would need to disclose this information [402] each time they post a comment in the communication channels on the platform.[403]

Request for Comment

147. Should the proposed rules require intermediaries to take any different or additional steps to help achieve compliance with the requirement for promoters to disclose the receipt of compensation? If so, what other steps would be appropriate and why?

148. Should the proposed disclosures to investors be required to be made at some time other than at account opening? For instance, should the reminder about disclosure obligations be made each time an investor accesses the intermediary's platform or the communication channels provided by the intermediary? Why or why not?

149. The proposed rules would require disclosure be made to investors, in relation to obligations of any person who receives compensation, whether in the past or prospectively, to promote an issuer's offering, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the issuer on the intermediary's platform. Should the obligations apply to other classes of persons as well, such as affiliates of the issuer, regardless of whether they are engaged in promotional activities? Why or why not?

d. Compensation Disclosure

The proposed rules would require the intermediary, when establishing an account for an investor, to clearly disclose the manner in which it will be compensated in connection with offerings and sales of securities made in reliance on Section 4(a)(6).[404] This requirement would help to ensure investors are aware of any potential conflicts of interest of an intermediary that arise from the manner in which the intermediary is compensated. While the JOBS Act does not require this disclosure, we believe that providing this information to investors before they invest would help to ensure that they are making informed investment decisions.[405]

Request for Comment

150. Is the requirement for an intermediary to disclose how it is compensated an appropriate requirement? Why or why not? Would a time other than at account opening be more appropriate for this disclosure? Please explain.

151. Should the proposed rules include any additional requirements with regard to disclosure of compensation? If so, what other requirements would be appropriate and why?

152. While the proposed rules do not specify the types of information that an intermediary must obtain from an investor at the account opening stage, we recognize that this stage provides an opportunity for intermediaries to collect certain demographic information about investors. Although some information intermediaries would collect from investors might already be required under their anti-money laundering obligations or pursuant to registered national securities association rules, there is some information about investors which might not be required to be collected but which, without involving disclosure of any personally identifiable information of investors, could help us and the applicable national securities association to better understand the level of investor sophistication in this market and investor protection needs, among other things. For instance, connecting certain demographic information to offering characteristics and outcomes could help in the evaluation of the effectiveness of crowdfunding in raising capital for startups and small businesses. The information that could be collected includes, for example, demographic information about investors that excludes any personally identifiable information and is aggregated on a per offering basis, indicating characteristics such as education level, income, wealth, geographic distance from the issuer and professional affiliations. At the same time, we recognize that requiring the collection of this data could likely increase the burden on investors and intermediaries participating in transactions conducted pursuant to Section 4(a)(6). Should we require intermediaries to collect and provide some or all of this information to us and the applicable national securities association? Should some or all of this information be made more widely available? Why or why not? If so, which metrics should we require, and in what format, if any, should we require it be provided? To what extent do brokers already collect this information for offerings in which they are involved? Is there a particular point in time or method that would be more appropriate or convenient for intermediaries to collect this information? Would a requirement for intermediaries to collect this information at the account opening stage discourage investors from opening accounts with intermediaries, and ultimately limit the ability of issuers to raise capital in reliance on the exemption in Section 4(a)(6)? Please explain.

5. Requirements With Respect to Transactions

a. Issuer Information

Section 4A(a)(6) requires each intermediary to make available to the Commission and potential investors, not later than 21 days prior to the first day on which securities are sold to any investor (or such other period as the Commission may establish), any information provided by the issuer pursuant to Section 4A(b). The proposed rules would implement this

[401] *See* proposed Rule 302(c) of Regulation Crowdfunding.

[402] In addition to the information proposed Rule 302(c) requires, promoters would also be required to disclose the amount of compensation pursuant to Section 17(b) of the Securities Act (15 U.S.C. 77q(b)).

[403] *See* proposed Rule 303(c)(4) of Regulation Crowdfunding. We recognize that after opening an account, an investor may come to be compensated by, or become an employee of, an issuer or potential issuer. For this reason, proposed Rule 303(c)(4) would require an intermediary to require that any person, when posting a comment in the communication channels, clearly disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or receives compensation, whether in the past or prospectively, to promote an issuer's offering. We anticipate that an intermediary could comply with this requirement in part by, for example, establishing a ''pop-up'' window which reminds the investor of the requirement each time the investor accesses, or attempts to post a comment on, the communication channels on the intermediary's platform. *See* discussion in Section II.C.5 below. *See also* proposed Rule 205 of Regulation Crowdfunding.

[404] *See* proposed Rule 302(d) of Regulation Crowdfunding. *See also* proposed Rule 303(f) of Regulation Crowdfunding.

[405] *See* Staff of the U.S. Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers: As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011) (''*Study on Investment Advisers and Broker-Dealers*''), *available at http://www.sec.gov/news/studies/2011/913studyfinal.pdf*, for more information about how compensation disclosure impacts investment decisions.

provision by requiring each intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) to make available to the Commission and to potential investors any information required to be provided by the issuer under Rules 201 and 203(a) of proposed Regulation Crowdfunding.[406] The proposed rules would further require that: (1) An intermediary make this information publicly available on the intermediary's platform, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information;[407] (2) this information be made publicly available on the intermediary's platform for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments;[408] and (3) this information, including any additional information provided by the issuer,[409] remain publicly available on the intermediary's platform until the offer and sale of securities is completed or cancelled. An intermediary would be prohibited from requiring any person to establish an account with the intermediary in order to access this information.

We believe that this approach also would satisfy the requirement under Section 4A(d) for the Commission to ''make [available to the states], or . . . cause to be made [available] by the relevant broker or funding portal, the information'' issuers are required to provide under Section 4A(b) and the rules thereunder. This approach should help investors, the Commission, FINRA (and any other applicable registered national securities association) and other interested parties, such as state regulators, to access information without impediment. The proposed rules should help to ensure that an investor has an adequate opportunity to evaluate the investment opportunity and determine whether it is suitable for him or her.[410] Finally, we do not believe that any person should be required to open an account with, or otherwise provide personal information to, an intermediary before reviewing the materials related to an offering or the educational materials provided by the intermediary.

One commenter expressed the view that an intermediary should not be required to send information to the Commission before listing an offering on its platform.[411] The proposed rules would permit an intermediary to make issuer information available to both the Commission and potential investors simultaneously through its platform. Another commenter recommended that the private placement memorandum provided by the issuer should be reviewed by a properly qualified securities representative prior to the intermediary providing the information to potential investors.[412] We are not proposing at this time to impose such a requirement. Although review by a securities professional could provide some degree of additional investor protection, we are mindful of Congress' intent that these offerings present a cost-effective method of raising capital. Further, the proposed rules would provide a safeguard for investors by requiring an intermediary to have a reasonable basis for believing that an issuer complies with the requirements of Section 4A(b) and Regulation Crowdfunding, and to deny access to an issuer or cancel its offering, if the intermediary believes that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection.[413]

Request for Comment

153. Should we require intermediaries to continue to display issuer materials for some period of time after completion of the offering? Why or why not? If such a requirement were used, which time period would be appropriate? Why? What would be the potential costs and benefits associated with any such requirement?

154. Section 4A(a)(6) requires an intermediary to make available the information that an issuer is required to provide under Section 4A(b). Should we require an intermediary to make efforts to ensure that an investor who has made an investment commitment has actually reviewed the relevant issuer information? Why or why not? If so, how could we implement this?

155. Instead of, or in addition to, requiring that intermediaries make issuer information available on their platforms, should we require that intermediaries deliver this information to investors? Why or why not? If so, should we specify a particular medium, such as email or a screen the investor must click through?

156. Should we consider timeframes other than the minimum 21 days from the time an issuer offers securities on an intermediary's platform, during which the offering information should be made available?

157. Should some or all of the issuer's offering materials be required to remain on an intermediary's platform after the close of an offering? Why or why not? If so, for how long?

b. Investor Qualification

i. Compliance With Investment Limitations

Section 4(a)(6)(B) imposes certain limitations on the aggregate amount of securities that can be sold to an investor in reliance on Section 4(a)(6) during a 12-month period. Section 4A(a)(8) further imposes an obligation on intermediaries to ensure that no investor exceeds those limits. The proposed rules would implement this latter requirement by providing that, before permitting an investor to make an investment commitment on its platform, an intermediary must have a reasonable basis to believe that the investor satisfies the investment limitations under Section 4(a)(6)(B) and Regulation Crowdfunding.[414]

Three commenters stated that it would be difficult for an intermediary to determine whether an investor has exceeded the investment limitations because an investor may not always use the same intermediary.[415] Another commenter stated that it is unclear how an intermediary will be able to verify the investment limits, unless the

[406] *See* proposed Rule 303(a) of Regulation Crowdfunding.

[407] While we are not requiring that intermediaries make the relevant information available in any particular format, we note that issuers would be required to file the information on EDGAR. *See* proposed Rule 203 of Regulation Crowdfunding. *See also* Section II.B.3 above for a discussion of the filing requirements applicable to issuers.

[408] Accordingly, the offering could not close at any time before the end of the 21st day after the issuer disclosure materials are made available on the intermediary's platform.

[409] Additional information could include, for example, information required to be filed with the Commission in a specific format (*e.g.*, on EDGAR) under proposed Rules 201 and 203(a) of Regulation Crowdfunding, but prepared in a different presentation format, for example on slides, on the intermediary's platform.

[410] *See* proposed Rule 303(a)(1) of Regulation Crowdfunding. *See also* proposed Rules 303(a)(2) and 303(a)(3) of Regulation Crowdfunding. Intermediaries have broad recordkeeping obligations that would include any written materials that are used as part of an intermediary's business, which include issuer materials made available on its platform. Registered brokers would have to maintain records pursuant to Exchange Act Section 17 and the rules thereunder. 15 U.S.C. 78q; 17 CFR 240.17a *et seq*. Funding portals would be subject to the recordkeeping requirements of proposed Rule 406 of Regulation Crowdfunding. *See* discussion in Section II.D.5 below.

[411] *See* Crowdfunding Offerings Ltd. Letter 2.

[412] *See* Arctic Island Letter.

[413] *See* proposed Rule 302 of Regulation Crowdfunding and discussion in Section II.C.3 above.

[414] *See* proposed Rule 303(b)(1) of Regulation Crowdfunding. *See also* Section II.A.2 above for a further discussion of the limitations on investments.

[415] *See* Cera Technology Letter; Crowdfunding Offerings Letter 3; Schwartz Letter.

intermediary is permitted to rely upon an investor's representations regarding his or her prior crowdfunding investments.[416] Another commenter raised concerns that an investor may be able to establish multiple user accounts with a single intermediary and thereby exceed the maximum investment limit, despite the best efforts of the intermediary.[417] Another commenter suggested that each intermediary should be required to monitor investor activity only on its own platform.[418] The commenter further stated that before completing an investment through an intermediary, investors should be required to make representations to an intermediary regarding any investments made through another intermediary within the last year. Another commenter suggested that the Commission should permit intermediaries to create and use a centralized database for aggregate checks.[419]

We recognize that it would be difficult for intermediaries to monitor or independently verify whether each investor remains within his or her investment limits for each particular offering in which he or she intends to participate. While the proposed rules would permit reliance on a centralized database providing information about particular investors, if it could help provide an intermediary with a reasonable basis for a conclusion, we understand that none currently exists. For these reasons, the proposed rules provide that an intermediary may rely on an investor's representations concerning compliance with investment limitation requirements based on the investor's annual income and net worth and the amount of the investor's other investments in securities sold in reliance on Section 4(a)(6) through other intermediaries. For example, an intermediary may choose to satisfy this requirement by providing a function on its platform that prompts investors to enter amounts of their annual income, net worth, and the amount of total investments made over the past 12 months on all intermediaries' platforms, that would then generate the amount of investment the investor would be permitted to make at that time pursuant to the investment limitations. The intermediary could not rely on an investor's representations if the intermediary had reason to question the reliability of the representation. In this regard, it would not be reasonable for an intermediary to ignore other investments made by an investor in securities sold in reliance on Section 4(a)(6) through an account with that intermediary or other information or facts about an investor within its possession.

Request for Comment

158. Is the proposed approach for establishing compliance with investment limits appropriate? Why or why not? Is there another approach that we should consider? Please explain.

159. As mentioned above, we are proposing that an intermediary may rely on the representations of a potential investor. Is this an appropriate approach? Why or why not? Is there another approach we should consider? Please explain.

160. Should we require an intermediary to avail itself of readily available information concerning investor limits, such as a centralized database containing information relating to whether particular investors were in compliance with the investment limits, should one become established? Why or why not?

161. Should we require intermediaries to request other intermediary accounts that an investor may have before accepting an investment commitment? Why or why not?

ii. Acknowledgement of Risk

Section 4A(a)(4) requires an intermediary to ensure that each investor: (1) Reviews the educational materials discussed above; (2) positively affirms that the investor understands that he or she is risking the loss of the entire investment and that the investor could bear such a loss; and (3) answer questions demonstrating an understanding of the level of risk generally applicable to investments in startups, emerging businesses and small issuers, the risk of illiquidity and such other matters as the Commission determines appropriate. As discussed above, the proposed rules would require an intermediary to provide to investors certain educational materials in connection with the opening of an account.[420] The proposed rules would further require an intermediary, each time before accepting an investment commitment, to obtain from the investor a representation that the investor has reviewed the intermediary's educational materials, understands that the entire amount of his or her investment may be lost and is in a financial condition to bear the loss of the investment.[421] The intermediary also must ensure each time before accepting an investment commitment that each investor answers questions demonstrating the investor's understanding that there are restrictions on the investor's ability to cancel an investment commitment [422] and obtain a return of his or her investment, that it may be difficult for the investor to resell the securities, and that the investor should not invest any funds in a crowdfunding offering unless he or she can afford to lose the entire amount of his or her investment.

A commenter requested guidance on the steps intermediaries must take to ensure that an investor understands the educational materials intermediaries are required to provide.[423] One commenter expressed concern that the requirements in Section 4A(a)(4) could be intimidating to potential investors and recommended that we require very short affirmations that could easily be understood.[424] Another commenter stated that the level of understanding that an investor can prove is too

[416] *See* NSBA Letter. *See also* 2012 SEC Government-Business Forum, note 30 (recommending that investors should be permitted to self-certify as to their statutory investment limits and that funding portals should be permitted to rely on certifications made by third parties as to investment limits).

[417] *See* Grow VC Letter (stating that the Commission should require the following measures: ''closely monitoring investment activity in any user account; requiring each user account to provide unique bank account details which are not used by any other user account; and requiring the investor to represent and warrant that such investor understands the maximum investment limit and will not exceed such limits'').

[418] *See* RocketHub Letter 1.

[419] *See* Spinrad Letter 1 (stating that the underlying database would consist of information representing users, offerings, transactions and other elements of the market, and it would be used to ensure that investors do not purchase beyond the annual limits, even from multiple issuers across multiple intermediaries).

[420] *See* proposed Rule 302(b) of Regulation Crowdfunding and discussion in Section II.C.4.b above.

[421] *See* proposed Rule 303(b)(2) of Regulation Crowdfunding.

[422] We proposed this requirement under discretionary authority granted in Section 4A(a)(4)(C)(iii). As discussed in Section II.C.4.b above, in relation to the educational materials, we believe that it is important for investors to receive this information before making any investment commitments.

[423] *See* CFIRA Letter 2.

[424] *See* Cera Technology Letter (stating that a check-the-box type approach could be used, as well as the following draft text: ''I understand that I could easily lose all of the money I invest in this company,'' or ''I understand that X% of start-ups in this category fail''). *See also* Liles Letter 2 (stating that asking potential investors to take a test to demonstrate understanding of risks would be unorthodox and awkward at best and that a signed acknowledgement by investors that they understand each enumerated warning about the specific risks in the investment would suffice for compliance with the risk disclosure requirement); Verdant Ventures Letter (stating that a check-the-box type of approach could be used on funding portal Web sites to acknowledge the understanding of risk specifically for investors who are making low investments of $100 to $500 and that the regulation levels should be adjusted proportionally to larger individual dollar investments, and therefore, low contribution amounts should be subject to less regulation).

subjective to be useful and that an intermediary could not design a system to guarantee that an investor understands a disclosure.[425] We agree that it would not be possible for an intermediary to ensure that all investors understand the risk disclosure. The requirements of the proposed rules are intended to require intermediaries to provide investors with meaningful disclosures concerning the risks of any potential investment and obtain answers demonstrating an understanding of the required statutory elements.[426] The questionnaire required under the proposed rules should help to address concerns of commenters that Section 4A(a)(4) requires more than a mere self-certification.[427]

One commenter requested that the Commission develop a model form of acknowledgment that intermediaries can use and retain to satisfy the requirements of Section 4A(a)(4).[428] Another commenter suggested that intermediaries should have flexibility to try different methods of obtaining this acknowledgement.[429] We are not proposing a model form of acknowledgement or questionnaire. Rather, the proposed rules would permit an intermediary to develop the representation and questionnaire in any format that is reasonably designed to demonstrate the investor's receipt of the information and compliance with the other requirements under the proposed rules. As with the educational material requirements, we believe that an intermediary's familiarity with its business and likely investor base would make it best able to determine the format in which to present the material required under the proposed rules.[430] As one commenter suggested, an intermediary could design a multiple choice quiz that would not permit an investor to successfully make an investment commitment until the investor has correctly answered a specific number of questions.[431] Other formats that could be used are questions that must be answered ''Yes'' or ''No,'' or ''True'' or ''False.'' Any format used must be reasonably designed to demonstrate receipt and understanding of the information. Thus, the requirements of proposed Rule 303(b) would not be satisfied if, for example, an intermediary were to pre-select answers for an investor. We propose to give intermediaries flexibility in how they fulfill this requirement because we do not want to foreclose viable alternatives. There are many ways, especially on a web-based system, to convey information to, and obtain effective acknowledgement from, investors.

The proposed rules would require an intermediary to obtain an investor representation and completed questionnaire before accepting any investment commitment. Accordingly, the intermediary would be required to obtain these items each time an investor seeks to make an investment commitment.[432] This proposed requirement is intended to help ensure that investors engaging in transactions made in reliance on Section 4(a)(6) are fully informed and reminded of the risks associated with their particular investment before making any investment commitment.

Another commenter suggested that intermediaries should be required to designate a key person who will bear the responsibility to ensure that all investors demonstrate an understanding of the level of risks applicable to investments.[433] We are not proposing this requirement at this time. Although Section 4A(a)(4) requires an intermediary to ensure that each investor positively affirms that he or she understands the risks of investing in securities sold in reliance on Section 4(a)(6), at this time, we believe that each intermediary should have flexibility to design its own compliance program in a manner that is effective for it in light of its business model, types of offerings and any other relevant considerations.[434]

Request for Comment

162. Should we require intermediaries to have investors acknowledge issuer-specific or security-specific risks as part of the transaction process? Why or why not? If so, to what extent?

163. Are there considerations relating to investor acknowledgments we should take into account, other than those discussed above? Is the proposed requirement to obtain an acknowledgement as to investors' understanding of their ability to cancel investment commitments appropriate? Why or why not? Should we require acknowledgement of investors' understanding of any other matters? Why or why not? If so, which ones and why?

164. Are there any matters apart from the risks identified above that we should require to be addressed in the investor acknowledgements? If so, which ones, and why? How should they be addressed?

165. Should we provide a recommended form of questions and representations? Why or why not? If so, should the Commission provide the form as a starting point, and not a safe harbor, so that intermediaries can adapt the questions and representations to particular offerings? Why or why not?

c. Communication Channels

The proposed rules would require an intermediary to provide, on its platform, channels through which investors can communicate with one another and with representatives of the issuer about offerings made available on the intermediary's platform, subject to certain conditions.[435] While the JOBS Act does not impose this requirement, we believe that Congress contemplated that there would be such a mechanism in place for offerings made in reliance on Section 4(a)(6).[436] Some commenters

[425] *See* Crowdfunding Offerings Ltd. Letter 2.

[426] *See* proposed Rule 303(b)(2) of Regulation Crowdfunding.

[427] *See* proposed Rule 303(b)(2)(ii) of Regulation Crowdfunding. *See, e.g.*, Spinrad Letter 1; NASAA Letter (stating that intermediaries ''should [at a minimum] be required to design their web portals to require investors to click through a page that indicates they have read the investor-education information and to require investors to correctly answer a series of specific questions that are controlled by the Commission,'' and further stating that such requirements should be a precondition for membership or registration of an investor with a funding portal); The Motley Fool Letter (stating that a more involved process than a simple check-the-box type approach should be used to verify that investors acknowledge and understand the risks and that multiple choice questions should be used and tailored to testing whether potential investors understand the nature of crowdfunding risk, the potential for fraud, their legal rights and responsibilities and the probability of losing their entire investment). *See also* TechnologyCrowdFund Letter 1 (stating that the Commission should require each individual seeking to invest more than $2,000 to take an on-line course with a quiz on the possible pitfalls of crowdfunding).

[428] *See* CompTIA Letter.

[429] *See* Schwartz Letter.

[430] *See* proposed Rule 303(b)(2)(i) of Regulation Crowdfunding.

[431] *See* Spinrad Letter 1 (stating that if an investor were to answer a question incorrectly, an issuer could, for example, push the investor education material to investors for further review, or alternatively could, through a pop-up feature, explain the correct answer and then permit the investor to choose the right answer). *See also* note 427.

[432] *See* proposed Rule 303(b)(2) of Regulation Crowdfunding.

[433] *See* Commonwealth of Massachusetts Letter.

[434] FINRA (or any other applicable registered national securities association) could seek to impose a compliance structure that may require such designation. Any proposed requirement by FINRA (or any other applicable registered national securities association) would be filed with us pursuant to the Exchange Act and the rules thereunder. 17 CFR 240.19b–4.

[435] *See* proposed Rule 303(c) of Regulation Crowdfunding.

[436] *See* 158 Cong. Rec. S2231 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''In addition to facilitating communication between issuers and investors, intermediaries should allow fellow investors to endorse or provide feedback about issuers and offerings, provided that these investors

Continued

refer to communication channels as an integral part of crowdfunding. For example, one commenter suggested that intermediaries should provide a mechanism for communication between issuers and investors, without necessarily requiring the communication itself to take place.[437] Others have urged us to encourage dialogue among potential investors and issuers as a key component of the crowdfunding model, suggesting that it would contribute to low levels of fraud.[438] One commenter also maintained that there is value in allowing interested parties generally, such as experts and journalists, to participate in these discussions, as well as maintaining transparency regarding the identity of those participating in the discussions.[439]

The communication channels we are proposing would provide a centralized and transparent means for members of the public that have opened an account with an intermediary to share their views about investment opportunities and to communicate with representatives of the issuer to better assess the issuer and investment opportunity. Also, though communications among investors could occur outside the intermediary's platform, communications by an investor with a crowdfunding issuer or its representatives about the terms of the offering would be required to occur through these channels,[440] on the single platform through which the offering is conducted.[441] This requirement should provide transparency and accountability, and thereby further the protection of investors.

Under the proposed rules, an intermediary that is a funding portal would be prohibited from participating in any communications in these channels, apart from establishing guidelines for communication and removing abusive or potentially fraudulent communications.[442] For example, a funding portal could establish guidelines pertaining to the length or size of individual postings in the communication channels and could remove postings that include offensive or incendiary language. Intermediaries that are funding portals are prohibited from providing investment advice or recommendations. In contrast, intermediaries that are brokers may provide investment advice and recommendations, subject to certain conditions.[443]

The proposed rules would require the intermediary to make the communications on the channels publicly available for viewing. For instance, an intermediary could not restrict viewing of the communications to only those investors who have opened accounts with it. We believe that this requirement is consistent with the concept of crowdfunding, as it provides transparent crowd discussions about a potential investment opportunity. The proposed rule would, however, require the intermediary to permit only those persons who have opened accounts with it to post comments. While we recognize that this requirement could narrow the range of views represented by excluding posts by anyone who has not opened an account with the intermediary, we believe that this proposed requirement would help to establish accountability for comments made in the communication channels. Among other things, the records required to be kept by intermediaries should help to track the origins of any abusive or potentially fraudulent comments made through the communication channels. Without this measure, we believe there could be greater risk of the communications including unfounded, potentially abusive, biased statements aimed unjustifiably to promote or discredit the issuer and improperly influence the investment decisions of members of the crowd.

The proposed rules also would require any person posting a comment in the communication channels to clearly and prominently disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote the issuer's offering. This disclosure would apply to officers, directors and other representatives of the issuer, and also would be required of an intermediary that is a broker or its associated persons. Although the statute requires issuers, but not intermediaries, to disclose compensation to promoters of an offering, we believe that intermediaries, as the hosts of the communication channels, would be well placed to take measures to ensure that promoters are clearly identified in their communication channels, in accordance with Section 4A(b)(3).[444] This requirement would be consistent with Section 4A(b)(3), which requires issuers to take steps required by the Commission and established by rule, to ensure disclosure of compensation or promotional activity ''upon each instance of such promotional communication.''

Request for Comment

166. Should we require intermediaries to provide communication channels, as proposed, on their platforms? Why or why not? If not, what other methods of communication could, or should, be used and why?

167. Are the proposed conditions imposed on the requirement to provide communication channels appropriate? Why or why not? For example, should the communications on the channels be available for public viewing or participation? Why or why not? What other restrictions, if any, should communication channels be subject to, and why? For example, should we require more specific actions for intermediaries to take in order to ensure adequate disclosure of issuers' and promoters' communications? If so, what actions and why?

168. Under the proposed rules, we limit the ability to post in the communication channels to only those persons who have opened accounts with the intermediaries and thereby identified themselves to the intermediaries. Is this restriction adequate? Why or why not? Would it be appropriate to permit anyone, including persons who have not identified themselves in any way, to post comments in intermediaries'

are not employees of the intermediary. Investors' credentials should be included with their comments to aid the collective wisdom of the crowd.'').

[437] *See* RocketHub Letter 1.

[438] *See* Mollick Letter, Lucas Letter. One commenter raised a concern about communications being construed as investment advice by funding portals. *See* Grow VC Letter. *See also* Section II.D.3 below for a discussion of the proposed safe harbor for funding portals.

[439] *See* Mollick Letter.

[440] *See* proposed Rule 204 of Regulation Crowdfunding and discussion in Section II.B.4 above.

[441] *See* proposed Rule 100(a)(3) of Regulation Crowdfunding and discussion in Section II.A.3 above.

[442] *See* proposed Rule 303(c) of Regulation Crowdfunding.

[443] The Investment Advisers Act of 1940 excludes from the definition of investment adviser any broker or dealer whose performance of investment advisory services is ''solely incidental'' to the conduct of its business as a broker or dealer and who receives no ''special compensation'' for those advisory services. *See* Advisers Act Section 202(a)(11)(C) [15 U.S.C. 80b–2(a)(11)(C)]. *See also Study on Investment Advisers and Broker-Dealers,* note 405 at 15–16 (discussing the terms used in this exclusion). As such, brokers that are not registered as investment advisers are able to provide investment advice, provided they meet these two requirements. Subject to applicable rules, brokers also can make recommendations concerning securities, if they have a reasonable basis to believe that the recommendations are suitable. *See, e.g.,* FINRA Rule 2111 (''Suitability'').

[444] *See* discussion in Section II.B.5 above.

communication channels? Why or why not?

169. The proposed rules would require any person posting a comment in the communication channels to disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote the issuer's offering. Should we impose this requirement on other types of persons as well, such as affiliates of the issuer, regardless of whether they are engaging in promotional activities? Why or why not?

170. Should we require the intermediary to maintain the communication channels of its platform during the post-offering period, in order to permit communication between investors and the issuer after the offering has completed? Why or why not? If so, for how long after the offering is completed (*e.g.,* for one month, for six months, for one year, or longer) should the intermediary be required to maintain the channels?

d. Notice of Investment Commitment

The proposed rules would require an intermediary, upon receipt of an investment commitment from an investor, to promptly give or send to the investor a notification disclosing: (1) The dollar amount of the investment commitment; (2) the price of the securities, if known; (3) the name of the issuer; and (4) the date and time by which the investor may cancel the investment commitment.[445] This notification would be required to be provided by email or other electronic media, and to be documented in accordance with applicable recordkeeping rules.[446] The proposed notification is intended, among other things, to provide the investor with a written record of the basic terms of the transaction, as well as a reminder regarding his or her ability to cancel the investment commitment.

Request for Comment

171. Would the notifications we are proposing to require be useful to investors? Why or why not? Should we provide further specificity as to when notice must be provided?

172. Are there any other circumstances under which an investor should receive a notice? If so, under what other circumstances?

e. Maintenance and Transmission of Funds

Securities Act Section 4A(a)(7) requires that an intermediary ''ensure that all offering proceeds are only provided to the issuer when the aggregate capital raised from all investors is equal to or greater than a target offering amount, . . . as the Commission shall, by rule, determine appropriate.'' The proposed rules would implement this provision and address the maintenance and protection of investor funds, pending completion of a transaction made in reliance on Section 4(a)(6).[447]

The proposed rules would require an intermediary that is a registered broker to comply with established requirements in Exchange Act Rule 15c2–4[448] for the maintenance and transmission of investor funds.[449] Application of Exchange Act Rule 15c2–4(b) to an intermediary that is a broker in the crowdfunding context, would require, in relevant part, that money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interest therein, until the appropriate event or contingency has occurred, and then the funds would be promptly transmitted or returned to the persons entitled thereto; or all such funds would be promptly transmitted to a bank, which has agreed in writing to hold such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred. Under Section 4A(a)(7), proceeds are to be transmitted to the issuer only if the target offering amount is met or exceeded. As explained in the adopting release to Rule 15c2–4, this rule was designed to prevent fraud ''either upon the person on whose behalf the distribution is being made or upon the customer to whom the payment is to be returned if the distribution is not completed.''[450]

The proposed rules would establish separate requirements for an intermediary that is a funding portal.[451] Because a funding portal cannot receive any funds, it would be required to direct investors to transmit money or other consideration directly to a qualified third party that has agreed in writing[452] to hold the funds for the benefit of the investors and the issuer and to promptly transmit or return the funds to the persons entitled to such funds.[453] The proposed rules would define ''qualified third party'' to mean a bank[454] that has agreed in writing either (i) to hold the funds in escrow for the persons who have the beneficial interests in the funds and to transmit or return the funds directly to the persons entitled to them when the appropriate event or contingency has occurred; or (ii) to establish a bank account (or accounts) for the exclusive benefit of investors and the issuer. We have chosen to specify that the qualified third party would be a bank because investors, as well as intermediaries and issuers, would then be afforded the protections of existing regulations that apply to banks, in particular those pertaining to the safeguarding of customer funds.[455]

The proposed rules also would require an intermediary that is a funding portal to promptly direct transmission of funds from the qualified third party to the issuer when the aggregate amount of investment commitments from all investors is equal to or greater than the target amount of the offering and the cancellation period for each investor has expired,[456] but no earlier than 21 days after the date on which the intermediary makes publicly available on its platform the information required to be provided by the issuer such as information about the issuer and the offering pursuant to Rules 201 and 203(a) of proposed Regulation Crowdfunding.[457] We believe that this approach is consistent

[445] *See* proposed Rule 303(d) of Regulation Crowdfunding. The statutory requirements for intermediaries do not expressly address an intermediary's obligation to notify an investor of receipt of the investor's commitment, although the statutory provision provides us with authority to do so in our rules. *See* Section 4A(a)(12).

[446] Intermediaries that are brokers would be subject to the recordkeeping requirements of Exchange Act Rules 17a–3 and 17a–4, and intermediaries that are funding portals would be subject to recordkeeping requirements under proposed Rule 404 of Regulation Crowdfunding.

[447] *See* proposed Rule 303(e) of Regulation Crowdfunding.

[448] 17 CFR 240.15c2–4.

[449] *See* proposed Rule 303(e)(1) of Regulation Crowdfunding.

[450] *Adoption of Rule 15c2–4 under the Securities Exchange Act of 1934,* Release No. 34–6737 (Feb. 21, 1962) [27 F.R. 2089 (Mar. 3, 1962)].

[451] *See* proposed Rule 303(e)(2) of Regulation Crowdfunding.

[452] This written agreement would be required to be maintained by the funding portal pursuant to proposed Rule 404 of Regulation Crowdfunding. *See* discussion in Section II.D.5 below.

[453] In the crowdfunding context, it is expected that the intermediary would be making the determination as to whether the contingency, *i.e.,* the target offering amount, has been met.

[454] *See* Exchange Act Section 3(a)(6) [15 U.S.C. 78c(a)(6)] (defining ''bank'').

[455] For example, protections afforded to bank accounts include FDIC deposit insurance. *See* Federal Deposit Insurance Corp., *FDIC Deposit Insurance Coverage, http://www.fdic.gov/deposit/deposits/dis/.*

[456] *See* Section II.C.6 below for a discussion of the cancellation period.

[457] *See* proposed Rule 303(e)(3)(i) of Regulation Crowdfunding. *See also* Exchange Act Rule 10b–9 [17 CFR 240.10b–9].

with the requirements in (1) Section 4A(a)(7) providing for the transfer of funds to an issuer when the issuer's target offering amount has been met, (2) Section 4A(a)(6) providing that issuer information be made available to investors for at least 21 days prior to the first day on which securities are sold in the offering, and (3) Section 4A(b)(1)(G) providing that investors must be allowed a reasonable opportunity to rescind their investment commitment. Under our proposed rules, an intermediary could permit a minimum-maximum offering, for example, in which the minimum would serve as the target offering amount.[458]

The proposed rules also would require an intermediary that is a funding portal to promptly direct the return of funds to an investor when an investment commitment has been cancelled (including when there has been a failure to obtain effective reconfirmation when there has been a material change).[459] The proposed rules also would require an intermediary that is a funding portal promptly to direct the return of funds to investors when an issuer does not complete an offering.[460] This could occur if an issuer does not receive investment commitments that meet its minimum target amount during the offering period. There also may be other circumstances in which an issuer chooses to cancel its offering.[461]

Some commenters suggested that investors should be able to transmit funds for an investment commitment through a mechanism such as those provided by Automated Clearing House (''ACH''), PayPal, Inc. or a linked bank account.[462] We are not proposing to limit or require a particular payment mechanism, so as to provide both intermediaries and investors with flexibility in the means of payment, but we note that under the statute and the proposed rules, an intermediary that is a funding portal may not hold, manage, possess or otherwise handle investor funds or securities.[463] One commenter urged us not to permit the use of credit cards to fund an investment because investors could claim charge-backs[464] after a security is sold.[465] Two commenters[466] advocated permitting the use of credit cards for certain types of crowdfunding offerings, with one noting that this payment method involves customary Internet disclosures on the part of the investor.[467] Again, we are not proposing to limit payment mechanisms, but we note that an intermediary could, in its discretion, decline to accept certain payment methods, such as credit cards, or accept them only in certain circumstances.[468]

One commenter recommended that we prohibit purchases by an issuer or its officers, directors, control persons and other affiliates from counting toward meeting the target offering amount and obtaining a release of the funds held in escrow.[469] The commenter expressed concern that, without this prohibition, issuers that are unable to attract sufficient interest from unaffiliated investors could ''game'' the system by accepting affiliated investor funds in an offering that otherwise would have failed. We believe that this commenter's concern is reflected in the purpose and intent of the JOBS Act's crowdfunding provisions. In particular, we believe it would be contrary to the intent and purpose of the statute and the proposed rules to declare an offering ''sold'' on the basis of ''*non-bona fide sales* designed to create the appearance of a successful completion of the offering.''[470] As we have said in other contexts, non-bona fide purchases would include ''purchases by the issuer through nominee accounts or purchases by persons whom the issuer has agreed to guarantee against loss.''[471] Although we are not restricting directors and officers of an issuer from purchasing securities in an offering, we expect intermediaries to scrutinize any purchases by these individuals for ''red flags,'' such as repeated investment commitments and cancellations, that would indicate that the purchase was designed to create an impression that the offering has reached, or will reach, its target amount.[472]

Several commenters urged us to adopt net capital standards for funding portals.[473] We are not proposing net capital standards for funding portals primarily because they are prohibited from handling, managing or possessing investor funds or securities. We believe that the requirements relating, in particular, to transmission of proceeds under the proposed rules would help ensure that investor funds are protected, without requiring funding portals to maintain net capital. We are, however, proposing to require funding portals to obtain fidelity bonds, as discussed below.[474]

Request for Comment

173. Are the proposed requirements for fund maintenance and transmission appropriate? Are there other types of custody arrangements that we should specifically permit? Why or why not? If so, what types of arrangements should we permit and how would they protect investor funds?

174. Should we prohibit any variations of a contingency offering, like minimum-maximum offerings? Why or why not? Should we require that offerings made in reliance on Section

[458] In a minimum-maximum offering, a minimum amount of securities must be sold within the offering period in order for a contingency to be satisfied, and the amount of securities sold may not exceed a pre-determined maximum. *See* Vim Funding Letter (suggesting that minimum and maximum offerings will allow issuers to focus on achieving ''funding milestones'' and the amount of funding they believe they need, while an ''all or nothing'' offering will likely incentivize issuers to seek smaller raises because of the possibility of failing at raising a larger amount). *Compare* AppleSeedz Letter (stating that an ''all or nothing'' offering would best protect investors). *See also* Section II.B.1.a.i(c) above for a discussion of the issuer's disclosure requirements about the use of proceeds in a minimum-maximum offering.

[459] *See* proposed Rule 303(e)(3)(ii) of Regulation Crowdfunding.

[460] *See* proposed Rule 303(e)(3)(iii) of Regulation Crowdfunding.

[461] *See* proposed Rule 304(d) and discussion in Section II.C.6 below regarding offerings that are not completed.

[462] *See* Vim Funding Letter (stating that investors should be able to authorize an intermediary to save investor banking information, in much the same way that consumers today can link a bank account to their online brokerage account); Arctic Island Letter (stating that funds should be transferred only to a bank in the United States).

[463] *See* Exchange Act Section 3(a)(80)(D) [15 U.S.C. 78c(a)(80)(D)] and discussion in Section II.D.3 below.

[464] In the United States, credit card customers have charge reversal rights under Regulation Z (12 CFR 226.13) of the Truth in Lending Act (15 U.S.C. 1666) and debit card holders are afforded such rights under Regulation E (12 CFR 205.6) of the Electronic Fund Transfer Act (15 U.S.C. 1693(b)).

[465] *See* RocketHub Letter 1.

[466] *See* City First Letter; RFPIA Letter 5.

[467] *See* City First Letter.

[468] We note that an investor's use of his or her right to dispute credit card charges could inhibit the ability of an issuer to meet its target or to provide accurate disclosures to investors and the Commission regarding the progress it has made toward, and whether it has, reached the target offering amount. This potential impact would affect offerings conducted through brokers and funding portals alike. We also note that pursuant to Exchange Act Section 3(a)(80)(D) (15 U.S.C. 78c(a)(80)(D)), a funding portal would be statutorily prohibited from extending credit or margin to customers.

[469] *See* NASAA Letter.

[470] *See Requirements of Rules 10b–9 and 15c2–4 under the Securities Exchange Act of 1934 Relating to Issuers, Underwriters and Broker-Dealers Engaged in an ''All or None'' Offering,* Release No. 34–11532, 7 SE.C. Docket 403, 1975 WL 163128, at 1 (July 11, 1975).

[471] *Id.*

[472] Intermediaries are required to cancel an offering if they believe the issuer or offering presents the potential for fraud or otherwise raises concerns regarding investor protection. *See* proposed Rule 301(c)(2) of Regulation Crowdfunding and discussion in Section II.C.3 above.

[473] *See, e.g.,* Risingtidefunding.com Letter (stating that capital standards should be limited); Arctic Island Letter (stating that funding portals should be required to maintain net capital that is at least equivalent to that of broker-dealers that handle customer funds).

[474] *See* discussion in Section II.D.1.c below.

4(a)(6) be conducted on an ''all-or-none'' basis? Why or why not?

175. Instead of a requirement to transmit funds ''promptly,'' as proposed, should we establish fixed deadlines for transmission, such as three business days? Why or why not?

176. Should we expressly incorporate into the rules prior Commission, SRO and staff guidance regarding Exchange Act Rule 15c2–4 on, among other things: (1) The meaning of the phrase ''distribution'';[475] (2) the meaning of ''prompt transmittal'';[476] (3) the payment mechanics for escrow arrangements;[477] (4) ''receipt of offering proceeds'' in the context of payment by check;[478] (5) ''prompt deposit,'' as it applies to the use of segregated deposit accounts; and (6) specifics as to who could act as the ''agent or trustee'' maintaining the segregated deposit account?[479] Why or why not? Should any other specific guidance regarding Rule 15c2–4 be explicitly incorporated into the rules? Please explain.

177. Should we expand the definition of ''qualified third party'' to include entities other than a bank? Why or why not? If so, which ones? Please explain how other entities could adequately safeguard customers' funds and securities?

178. Should we require funding portals to maintain a certain amount of net capital? Why or why not? If so, what would be an appropriate amount, and how should that amount be determined?

179. Should we require or prohibit certain methods of payments for the purchase of securities under Section 4(a)(6)? Why or why not? Are there any particular concerns raised by different methods? Would it depend upon whether a broker-dealer or funding portal is facilitating the transaction? Why or why not?

f. Confirmation of Transaction

The proposed rules would require that an intermediary, at or before the completion of a transaction made pursuant to Section 4(a)(6), give or send to each investor a notification disclosing: (1) The date of the transaction; (2) the type of security that the investor is purchasing; (3) the identity, price and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold; (4) certain specified terms of the security, if it is a debt or callable security; and (5) the source and amount of any remuneration received or to be received by the intermediary in connection with the transaction, whether from the issuer or from other persons.[480] This notification would be required to be provided by email or other electronic media, and to be documented in accordance with applicable recordkeeping rules.[481] As the Commission has long stated, transaction confirmations serve an important and basic investor protection function by, among other things, conveying information and providing a reference document that allows investors to verify the terms of their transactions, acting as a safeguard against fraud and providing investors a means by which to evaluate the costs of their transactions.[482] Each of the transaction items of information proposed to be required is intended to assist investors in memorializing and assessing their transactions. The requirement for an intermediary to disclose to an investor the source and amount of any remuneration received or to be received should help to highlight potential conflicts of interest the intermediary may have.

An intermediary that gives or sends to each investor the notification described above would be exempt from the requirements of Exchange Act Rule 10b–10 for the subject transaction.[483] The confirmation terms are similar to, but not as extensive as, those under Rule 10b–10. We believe that this difference is appropriate given the more limited scope of an intermediary's role in crowdfunding transactions. For example, Rule 10b–10 requires disclosure regarding such matters as payment for order flow,[484] riskless principal transactions,[485] payment of odd-lot differentials[486] and asset-backed securities.[487] These items generally would not be relevant to crowdfunding securities transactions or an intermediary's participation in such transactions, and their inclusion in a crowdfunding securities confirmation may be confusing to investors. We believe, therefore, that if an intermediary satisfies the notification requirements of the proposed rules, the intermediary would have provided investors with sufficient relevant information regarding the crowdfunding security, and so would not be required to meet the additional requirements of Rule 10b–10.

Request for Comment

180. Are the proposed items of disclosure appropriate? Should we require more or less disclosure? Please explain. Should the disclosure items differ from those in Rule 10b–10? Are there any proposed disclosures that should be modified or deleted? Why or why not? If so, what different items should be included and why? Should the proposed notification requirements

[475] *See, e.g., Baikie & Alcantara, Inc.,* Release No. 34–19410 (Jan. 6, 1983). *See also* Letter from Larry E. Bergmann, Assistant Director, Division of Market Regulation, Securities and Exchange Commission to Linda A. Wertheimer, Chairman, Subcommittee on Partnerships, Trusts and Unincorporated Associations, Federal Regulation of Securities Committee, American Bar Association (Oct. 16, 1984) (explaining that a ''distribution'' is any offering of securities, whether or not registered, that ''is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.'').

[476] *See* NASD (n/k/a FINRA), Notice to Members 84–64 (Nov. 26, 1984). *See also* NASD, Notice to Members 84–7 (Jan. 30, 1984).

[477] *Id.*

[478] *See* NASD (n/k/a FINRA), Notice to Members 94–7 (Jan. 24, 1994).

[479] *Id.*

[480] *See* Proposed Rule 303(f)(1) of Regulation Crowdfunding. The statutory requirements for intermediaries do not expressly address an intermediary's obligation to provide investors confirmation of a transaction, but the statute provides us with authority to do so in our rules. *See* Section 4A(a)(12).

[481] Intermediaries that are brokers would be subject to the recordkeeping requirements of Exchange Act Rules 17a–3 and 17a–4, and intermediaries that are funding portals would be subject to recordkeeping requirements under proposed Rule 404 of Regulation Crowdfunding.

[482] *See Confirmation of Transactions,* Release No. 34–34962 (Nov. 10, 1994) [59 FR 59612, 59613 (Nov. 17, 1994)].

[483] *See* proposed Rule 303(f)(2) of Regulation Crowdfunding. Exchange Act Rule 10b–10 (17 CFR 240.10b–10) generally requires a broker-dealer effecting a customer transaction in securities (other than U.S. savings bonds or municipal securities) to provide a notification to its customer, at or before completion of a securities transaction, that discloses certain information specific to the transaction. Specifically, Rule 10b–10 requires the disclosure of the date, time, identity, prices and number of securities bought or sold; the capacity in which the broker-dealer acted (*e.g.,* as agent or principal); yields on debt securities; and under specified circumstances, the amount of remuneration the broker-dealer will receive from the customer and any other parties. With regard to the specified circumstances mentioned above, the remuneration disclosures of Rule 10b–10 generally are required, but certain exclusions apply. For example, the remuneration disclosures are generally required where a broker or dealer is acting as agent for a customer or some other person. In the case where remuneration is received or to be received by the broker from such customer in connection with the transaction, the disclosures are not required where the remuneration paid by such customer is determined pursuant to written agreement with such customer, otherwise than on a transaction basis. 17 CFR 240.10b–10(a)(2)(i)(B). In contrast, the remuneration disclosures of proposed Rule 303(f)(2)(vi) would be required across all crowdfunding transactions where remunerations are received or are to be received. Given the limitations on the dollar amount of securities that could be offered, as well as the limits on individual investment amounts, in transactions relying on Section 4(a)(6), we would not expect investors or potential investors to negotiate individualized compensation agreements.

[484] 17 CFR 240.10b–10(a)(2)(i)(C).

[485] 17 CFR 240.10b–10(a)(2)(ii).

[486] 17 CFR 240.10b–10(a)(3).

[487] 17 CFR 240.10b–10(a)(7).

be deemed to be satisfied if an intermediary complies with Rule 10b–10? Why or why not? If we take this approach, would this confuse investors?

181. As mentioned above, we do not expect that investors would negotiate individualized compensation agreements with intermediaries in the crowdfunding context. Is this expectation appropriate? Why or why not? Should the proposed rules require disclosure of these arrangements, and if so, in a way that would be similar to or different from what is required under Rule 10b–10? Please explain.

6. Completion of Offerings, Cancellations and Reconfirmations

Section 4A(a)(7) requires an intermediary to allow investors to cancel their commitments to invest as the Commission shall, by rule, determine appropriate. As discussed above, Section 4A(b)(1)(G) requires issuers to provide investors, ''prior to sale, . . . a reasonable opportunity to rescind the commitment to purchase the securities.''

Commenters suggested a range of approaches to these statutory requirements. Some commenters favored a ''rolling'' rescission right, similar to the three business day rescission right provided in the Truth in Lending Act,[488] under which an investor could cancel an investment commitment within 24[489] or 48 hours[490] of making the initial commitment. Other commenters suggested permitting investors to cancel their investment commitments at any time prior to a specified date. For example, one commenter recommended permitting investors to cancel a commitment for up to three days before the target date.[491] Another commenter suggested that an investor should be permitted to cancel a commitment until the moment that the target offering amount is reached, but not thereafter.[492] Another commenter recommended a ten-day window, after a target offering amount is met, during which investors could cancel a commitment to invest.[493] Another commenter recommended that an investor be permitted to cancel a commitment until the date the offering closes.[494] In contrast, one commenter recommended that an investor be permitted to cancel a commitment only if the offering fails to meet the target amount or for other limited purposes.[495]

We believe that the principles underlying crowdfunding indicate that investors should have the full benefit of the views of other potential investors regarding offerings made in reliance on Section 4(a)(6), even after they have made investment commitments.[496] The proposed rules, therefore, would give investors an unconditional right to cancel an investment commitment for any reason until 48 hours prior to the deadline identified in the issuer's offering materials.[497] Under this approach, an investor could reconsider his or her investment decision with the benefit of the views of the crowd and other information, until the final 48 hours of the offering. Thereafter, an investor would not be able to cancel any investment commitments made within the final 48 hours (except in the event of a material change to the offering, as discussed below). We believe that the other approaches suggested by commenters, described above, could either terminate the cancellation right too early, so that investors would not be able to benefit from the views of the crowd and other information they obtain, or too late, so that the issuer would be subject to uncertainty as to whether it had met the target offering amount. We believe that the proposed rules strike an appropriate balance between giving investors the continuing benefit of the collective views of the crowd and then, if desired, to cancel their investment commitments, while providing issuers with certainty about their ability to close an offering at the end of the offering period.

Pursuant to the proposed rules, if an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering once the target offering amount is reached, provided that: (1) The offering will have remained open for a minimum of 21 days; (2) the intermediary provides notice about the new offering deadline at least five business days prior to the new offering deadline; (3) investors are given the opportunity to reconsider their investment decision and to cancel their investment commitment until 48 hours prior to the new offering deadline; and (4) at the time of the new offering deadline, the issuer continues to meet or exceed the target offering amount.[498] We believe these conditions are appropriate, as they would result in adequate notice being provided to investors and are consistent with the statutory provisions that offering materials are made available for at least 21 days before any securities can be sold to an investor,[499] that proceeds be provided to the issuer only once the target offering amount has been met[500] and that investors are provided an opportunity to cancel their commitments.[501]

If there is a material change to the terms of an offering[502] or to the

[488] 15 U.S.C. 1601 *et seq.;* 12 CFR 226.

[489] *See* RocketHub Letter 1 (stating that: (1) A system could be used whereby commitments to invest would be considered ''pending'' for 24 hours, during which an investor would be able to cancel his or her investment commitment; after the 24-hour period expires, an investor's commitment status would be changed from ''pending'' to ''committed,'' and the investor's funds would be held in escrow until transferred to the issuer; (2) if an offering did not reach its target offering amount before a specific deadline, an investor's funds should be returned; (3) a short rescission period will protect investors from ''pump & dump'' schemes and minimize an issuer's exposure to the risk of a funding ''short fall''; (4) a longer rescission period is unnecessary because Title III requires a minimum offering period of 21 days, giving potential investors enough time to review an offering before making an investment commitment; and (5) because Title III contemplates that issuers could raise capital ''greater than a target offering amount,'' the issuer also must establish an offering cap that would limit oversubscriptions).

[490] *See* NCA Letter (stating that this will prevent commitments from being made solely for the purpose of attracting new investors (*i.e.,* ''pumping'' the offering) and that cancellation should be permitted when there is a change in investment terms or materially adverse information is subsequently disclosed).

[491] *See* RFPIA Letter 3 (further stating that the Commission should impose penalties on issuers if they abuse this provision).

[492] *See* Cera Technology Letter (stating that permitting investors to cancel a commitment to invest after the funding goal is reached could cause an entire fundraising round to collapse).

[493] *See* Crowdfunding Offerings Ltd. Letter 2 (stating that funding portals should be permitted to have an open and closed period for rescinding a commitment to invest; that this option is necessary in the event that an investor cancels his or her commitment to invest during the window; and that a competitor could commit to invest and then cancel that commitment at a critical moment during the fundraising effort, causing the offering to fall short of the target offering amount).

[494] *See* CFIRA Letter 9.

[495] *See* Schwartz Letter.

[496] *See, e.g.,* 158 Cong. Rec. S5474–03 (daily ed. July 26, 2012) (statement of Sen. Jeff Merkley) (''Two important investor protections in the Crowdfund Act are the public review period and withdrawal rights. They are designed to allow investors the chance to carefully consider offerings, permitting the 'wisdom of the crowd' to develop, rather than perhaps just the 'excitement of the crowd.' '').

[497] *See* proposed Rule 304(a) of Regulation Crowdfunding.

[498] *See* proposed Rule 304(b) of Regulation Crowdfunding. Consistent with the cancellation provision for an offering that does not close prior to the deadline identified in its offering materials, an investor would not be able to cancel any investment commitments made within the final 48 hours prior to the new offering deadline (except in the event of a material change to the offering).

[499] *See* Section 4A(a)(6).

[500] *See* Section 4A(a)(7).

[501] *See id.*

[502] We note that in those instances where an issuer has previously disclosed in its offering materials only the method for determining the price of the securities offered and not the final price of those securities, setting of the final price would be considered a material change. *See* Section II.B.2 above. We also note if the material change is to close the offering once the target offering amount is reached, which would be prior to the deadline identified in the offering materials, then the

information provided by the issuer regarding the offering, the proposed rules would require the intermediary to give or send to any potential investors who have made investment commitments notice of the material change, stating that the investor's investment commitment will be cancelled unless the investor reconfirms his or her commitment within five business days of receipt of the notice.[503] We recognize that complying with this requirement could result in certain offerings being extended beyond the offering period specified in the offering statement. If the investor fails to reconfirm his or her investment within those five business days, the proposed rules would require an intermediary, within five business days thereafter, to: (1) Provide or send the investor a notification disclosing that the investment commitment was cancelled, the reason for the cancellation and the refund amount that the investor should expect to receive; and (2) direct the refund of investor funds. We believe that when material changes arise during the course of an offering, an investor who had made a prior investment commitment should have a reasonable period during which to review the new information and to decide whether to invest. This notification would be required to be provided by email or other electronic media, and to be documented in accordance with applicable recordkeeping rules.[504]

Finally, if an issuer does not complete an offering because the target is not reached or the issuer decides to terminate the offering, the proposed rules would require an intermediary, within five business days, to: (1) Give or send to each investor who had made an investment commitment a notification disclosing the cancellation of the offering, the reason for the cancelation, and the refund amount that the investor should expect to receive; (2) direct the refund of investor funds; and (3) prevent investors from making investment commitments with respect to that offering on its platform.[505] This notification would be required to be provided by email or other electronic media, and to be documented in accordance with applicable recordkeeping rules.[506]

Request for Comment

182. Are the proposed requirements for cancellations and notifications appropriate? Why or why not? Should investors be permitted to withdraw commitments at any time until the offering closes? Should investors be provided with additional time to cancel their commitments after the closing of the offering if the commitment was made within 48 hours of the offering deadline? Would some time period other than 48 hours be more appropriate? Do the proposed rules, whereby an investor cannot cancel commitments made within 48 hours of the offering deadline, strike the appropriate balance between (1) giving investors the ability to cancel commitments in light of new views expressed in the crowd and (2) providing issuers with certainty about their ability to close an offering by meeting the target offering amount? Please explain. What are the advantages and disadvantages of any alternative time period? Should no new investment commitments be permitted after a date that is two full business days prior to the beginning of the 48-hour period when investments are no longer cancellable? Why or why not?

183. Should an investor be required to reconfirm his or her commitment to invest when a material change has occurred? Why or why not? Is the five business day period for reconfirmation after material changes appropriate? Would another time period be more appropriate? If so, what time period and why?

184. The proposed rules provide a mechanism by which existing disclosure materials can be modified in the event of a material change, with the original offering remaining open. Should the proposed rules require that an offering be cancelled in the event of a material change, and then, if the issuer desires, reopened in a new offering that includes the revised disclosure? Why or why not?

185. Are there any other circumstances under which an investor should receive a notification? If so, under what other circumstances? Should we provide further specificity on when notifications must be provided?

186. Under the proposed rules, in the event of a cancellation an intermediary would be required to provide a notice to prospective investors within five business days. Is this requirement appropriate? Should the time period be longer or shorter, such as 3 business days or 10 business days? Why or why not? Should we include any other notification requirements in the event an offering is canceled? If so, what requirement should we include and why?

7. Payments to Third Parties

Section 4A(a)(10) provides that an intermediary in a transaction made in reliance on Section 4(a)(6) shall not compensate ''promoters, finders, or lead generators for providing the broker or funding portal with the personal identifying information of any potential investor.''

One commenter noted that the terms ''promoters,'' ''finders'' and ''lead generators'' are not defined in the statute.[507] The commenter also expressed concern that promoters, finders and lead generators could provide a broker or funding portal with potential investors' personally identifiable information as long as the broker or funding portal did not directly compensate them.[508]

Another commenter stated that ''personal identifying information'' should be clearly defined.[509] While agreeing that funding portals should not be permitted to compensate third parties for personally identifiable information of potential investors, the commenter asserted that funding portals, but not registered brokers, should be allowed to compensate promoters, finders or lead generators for directing potential issuers or investors to view either the portal itself or specific offerings.[510] The commenter further stated that revenue sharing arrangements should not be restricted when these relationships are not promoter-, finder- or lead generator-based.[511]

The proposed rules would broadly prohibit an intermediary from compensating any person for providing it with the personally identifiable information of any investor or potential investor.[512] The term ''personally identifiable information'' would be defined to mean any information that

procedures required under proposed Rule 304(b), and not 304(c), would apply. *See* discussion in this Section II.C.6 above.

[503] *See* proposed Rule 304(c)(1) of Regulation Crowdfunding.

[504] Intermediaries that are brokers would be subject to the recordkeeping requirements of Exchange Act Rules 17a–3 and 17a–4, and intermediaries that are funding portals would be subject to recordkeeping requirements under proposed Rule 404 of Regulation Crowdfunding.

[505] *See* proposed Rule 304(d) of Regulation Crowdfunding.

[506] Intermediaries that are brokers would be subject to the recordkeeping requirements of Exchange Act Rules 17a–3 and 17a–4, and intermediaries that are funding portals would be subject to recordkeeping requirements under proposed Rule 404 of Regulation Crowdfunding.

[507] *See* Crowdfunding Offerings Letter 2.

[508] *See id.* (stating that there could be circumstances in which a third party stands to gain in some way by a successful crowdfunding effort).

[509] *See* RocketHub Letter 1.

[510] *See id.*

[511] *See id.*

[512] *See* proposed Rule 305(a) of Regulation Crowdfunding.

can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.[513] Personally identifiable information could include, for example, any information, such as name, social security number, date or place of birth, mother's maiden name or biometric records, that can be used to identify an individual, as well as any other information that is linked directly to an individual, such as financial, employment, educational or medical information. We believe that any person compensated for providing the personally identifiable information of potential investors would be acting as a promoter, finder or lead generator within the meaning of Section 4A(a)(10). Thus, the proposed rules would prohibit compensation broadly to ''any person.''

The proposed rules would, however, permit an intermediary to compensate a person for directing issuers or potential investors to the intermediary's platform if (1) the person does not provide the intermediary with the personally identifiable information of any potential investor, and (2) the compensation, unless it is paid to a registered broker or dealer, is not based, directly or indirectly, on the purchase or sale of a security offered in reliance on Section 4(a)(6) on or through the intermediary's platform.[514] The proposed rules would not permit a funding portal to compensate third parties by commission or other transaction-based compensation unless that third party is a registered broker or dealer and thereby subject to an established regulatory and oversight regime that provides important safeguards to investors. We believe that the prohibition on transaction-based compensation in the proposed rules would help to remove the incentive for high-pressure sales tactics and other abusive practices.[515] Under the proposed rules, an intermediary could pay a person a flat fixed fee[516] to direct other persons to the intermediary's platform through, for example, hyperlinks or search term results, if the intermediary received no personally identifiable information. Although the statute is clear that an intermediary cannot pay for the personally identifiable information of potential investors, we do not believe Congress intended to disrupt current practices, such as paying for advertising based on Internet search rankings. It would be acceptable under the proposed rules, therefore, for an intermediary to make payments to advertise its existence, provided that in doing so, it does not pay for the personally identifiable information of investors or potential investors.[517]

Request for Comment

187. Should we permit an intermediary to compensate a third party for directing potential investors to the intermediary's platform under the limited circumstances described above? Why or why not? Should any disclosures be required? Why or why not? Please identify reasonable alternatives to this approach, if any.

188. What other concerns may be relevant in the context of third parties referring others to intermediaries, and how could they be addressed? For example, should compensation be limited in some additional way? Please explain.

D. Additional Requirements on Funding Portals

1. Registration Requirement

a. Generally

Securities Act Section 4A(a)(1) requires that an intermediary facilitating a transaction made in reliance on Section 4(a)(6) register with the Commission as a broker or a funding portal. The statute does not, however, prescribe the manner in which a funding portal would register with the Commission.[518] Securities Act Section 4A(a)(12) requires intermediaries to comply with requirements as the Commission may, by rule, prescribe for the protection of investors and in the public interest. Exchange Act Section 3(h)(1)(C) also permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other requirements under [the Exchange Act] as the Commission determines appropriate.''

Some commenters asked specifically for clarification on the nature of a funding portal's registration requirements.[519] One commenter suggested that we permit a funding portal to have multiple intermediary Web sites under a single registration application.[520] The commenter argued that this will permit a registered funding portal to offer issuers the opportunity to offer their securities on a funding portal Web site that is specific as to parameters such as industry, geography, community and affinity group, which would result in a better organized market for both issuers and investors.

One commenter asked us to consider the creation of a ''Registered Portal-Check,'' similar to the BrokerCheck system maintained by FINRA, to provide greater transparency to participants in Section 4(a)(6) transactions.[521] Another commenter

[513] See proposed Rule 305(c) of Regulation Crowdfunding. The proposed definition is consistent with those used in other government agency reports that discuss strategies for protecting personally identifiable information. *See, e.g.,* Government Accountability Office (''GAO''), *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information,* GAO–08–536, at 1 n.1 (May 2008); GAO, *Information Security: Protecting Personally Identifiable Information*, GAO–08–343, at 5 n.9 (Jan. 2008). *See also* Erika McCallister, Tim Grance and Karen Scarfone, *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII): Recommendations of the National Institute of Standards and Technology,* U.S. Department of Commerce, National Institute of Standards and Technology, Special Publication 800–122, at ES–1 (Apr. 2010).

[514] *See* proposed Rule 305(b) of Regulation Crowdfunding. We note that the receipt of direct or indirect transaction-based compensation would strongly indicate that the recipient is acting as a broker. As such, the party receiving the compensation in the scenario described needs to consider whether it would be required to register as a broker

[515] *See Persons Deemed Not to Be Brokers,* Release No. 34–22172 (June 27, 1985) [50 FR 27,940, 27942 (July 9, 1985)] (''Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection that require application of broker-dealer regulation.''). *See also* 158 Cong. Rec. S5474–03 (daily ed. July 26, 2012) (statement of Sen. Jeff Merkley) (''[T]he limitation on off-platform advertising is intended to prohibit issuers—including officers, directors, and 20 percent shareholders—from promoting or paying promoters to express opinions outside the platform that would go beyond pointing the public to the funding portal. Such paid testimonials and manufactured excitement would represent a prohibited form of off-site advertising if those disclosures were not present. Whether on or off the platform, paid advertising must clearly be disclosed as such. In short, the investor deserves a transparent medium for making healthy decisions.'').

[516] A flat fixed fee is one that is not based on the success of the offering, and so would not be transaction-based compensation. As noted above, receipt of transaction-based compensation would strongly indicate that the recipient is acting as a broker, and the party receiving this kind of compensation needs to consider whether it would be required to register as a broker.

[517] *See also* proposed Rule 402 of Regulation Crowdfunding and discussion in Section II.D.3 below.

[518] *Compare* Exchange Act Section 15(b) [15 U.S.C. 78*o*(b)] (prescribing the manner of registration of broker-dealers).

[519] *See* NSBA Letter; RocketHub Letter 1. *See also* Applied Dynamite Letter (stating that the requirements for those who wish to be intermediaries in offerings pursuant to Rule 506 of Regulation D should be harmonized with those for funding portals, and that we should provide for a common registration process for the two). We note, however, that Securities Act Section 4(b)(1) provides an exemption from broker-dealer registration for certain portals facilitating transactions pursuant to Rule 506 of Regulation D, as revised by Section 201 of the JOBS Act.

[520] *See* NCA Letter.

[521] *See* CFIRA Letter 2 (further stating that the system should ''clearly identify the registration status of a funding portal and its management, display any regulatory actions against such portal and provide a hyperlink to its Web site'').

asked us to require that funding portals, like issuers engaged in crowdfunding transactions in reliance on Section 4(a)(6), be organized under and subject to the laws of a State or territory of the United States or the District of Columbia.[522]

We are proposing to establish a streamlined registration process under which a funding portal would register with the Commission by filing a form with information consistent with, but less extensive than, the information required for broker-dealers on Form BD.[523] Under the proposed rules, a funding portal would register by completing a Form Funding Portal, which includes information concerning the funding portal's principal place of business, its legal organization and its disciplinary history, if any; business activities, including the types of compensation the funding portal would receive; control affiliates of the funding portal and disclosure of their disciplinary history, if any; FINRA membership or membership with any other registered national securities association; and the funding portal's Web site address(es) or other means of access.[524] We also are proposing, as discussed in greater detail below, not to permit nonresident entities to register as funding portals unless they comply with certain conditions designed to provide the Commission and FINRA (or any other registered national securities association) with appropriate tools for supervising such entities.

The funding portal's registration would become effective the later of: (1) 30 calendar days after the date that the registration is received by the Commission; or (2) the date the funding portal is approved for membership in FINRA or any other registered national securities association. This approach is intended to help ensure that a funding portal is subject to regulation by the Commission and FINRA or any other national securities association before it can engage in business with the public.

We also are proposing to require a funding portal to file an amendment to Form Funding Portal within 30 days of any of the information previously submitted on Form Funding Portal becoming inaccurate for any reason.[525]

The proposed rules would permit a funding portal that succeeds to and continues the business of a registered funding portal to also succeed to the registration of the predecessor on Form Funding Portal.[526] The registration would be deemed to remain effective as the registration of the successor, if the successor, within 30 days after such succession, files a registration on Form Funding Portal and the predecessor files a withdrawal on Form Funding Portal.[527] The rule would further provide that, if succession is based solely on a change of the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor may, within 30 days after the succession, amend the notice registration of the predecessor on Form Funding Portal to reflect these changes. Form Funding Portal would require the successor to provide certain information, such as the name and Commission file number of the predecessor. The successor also would be required to briefly describe details of the succession, including any assets or liabilities not assumed by the successor.

The proposed rules are intended to provide an efficient registration mechanism for a person that becomes a successor to a funding portal.[528] The provisions on succession are intended to be used only when there is a direct and substantial business nexus between the predecessor and the successor.[529] The proposed rules would not be designed for use by a funding portal in order to sell its registration, eliminate substantial liabilities, spin off personnel or facilitate the transfer of a ''shell'' organization that does not conduct a funding portal business. To require that there be a legitimate connection between the predecessor and the successor, the instructions to the proposed Form Funding Portal would limit the term ''successor'' to an entity that assumes or acquires substantially all of the assets and liabilities of the predecessor funding portal's business. In addition, the proposed rule would not apply where the predecessor funding portal intends to continue to engage in funding portal activities.[530]

In certain circumstances, the proposed rule would allow the successor to file an amendment to the predecessor's Form Funding Portal. Successions by amendment would be limited to those successions that result from a formal change in the structure or legal status of the funding portal but do not result in a change in control.[531] Assuming that there is no change in control, succession by amendment would be available for changes in the form of organization, in legal status and in composition of a partnership.

In all other successions, the successor would be able to operate under the registration of the predecessor for a limited period of time only if it files its own completed application for registration on Form Funding Portal within 30 days after such succession. Examples of the types of successions that would require this type of application filing would include, but not be limited to, acquisitions and consolidations.

The proposed rules would require a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal.[532] The withdrawal would be effective on the later of 30 days after receipt by the Commission, after the funding portal is no longer operational, within such longer period of time as to which the funding portal consents or within such period of time as to which the Commission, by order, may determine as necessary or appropriate in the public interest or for the protection of investors.[533] This

[522] *See* Liles Letter 2 (stating that this requirement would strengthen the ability of the Commission and other U.S. authorities to make surprise audits or investigations of, or bring enforcement action against, a funding portal).

[523] *See* 158 Cong. Rec. S2230–31 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''As the Securities and Exchange Commission works to implement this new law, it is my hope that it will recognize that the funding portal registration process is meant to be more streamlined and less burdensome than traditional broker-dealer registration''); 158 Cong. Rec. S1817–29 (daily ed. Mar. 20, 2012) (statement of Sen. Jeff Merkley) (''Our amendment provides two pathways: The first pathway is for a portal to register as a broker-dealer. The second is streamlined funding portal registration.'').

[524] *See* proposed Rule 400(a) of Regulation Crowdfunding. We discuss below the information required to be included in the form.

[525] *See* proposed Rule 400(b) of Regulation Crowdfunding. A similar process exists for registered broker-dealers under Exchange Act Rule 15b3–1 (17 CFR 240.15b3–1).

[526] *See* proposed Rule 400(c) of Regulation Crowdfunding.

[527] Under the proposed rules, the registration of the predecessor funding portal would be deemed withdrawn 45 days after the notice registration on Form Funding Portal is filed by the successor. A similar process exists for registered broker-dealers under Exchange Act Rule 15b1–3 (17 CFR 240.15b1–3).

[528] We are proposing to treat funding portal successions in a manner consistent with broker-dealer successions. *See Registration of Successors to Broker-Dealers and Investment Advisers,* Release No. 34–31661 (Dec. 28, 1992) [58 FR 7 (Jan. 4, 1993)].

[529] We are proposing that a direct and substantial nexus exist between a predecessor and successor funding portal to be consistent with the applicable rules for broker-dealer successions.

[530] *See* proposed Rule 400(c)(1) of Regulation Crowdfunding, which requires the predecessor funding portal to file a withdrawal on Form Funding Portal as a condition of the successor registration.

[531] *See* proposed Rule 400(c)(2) of Regulation Crowdfunding.

[532] *See* proposed Rule 400(d) of Regulation Crowdfunding.

[533] A similar process exists for registered broker-dealers under Exchange Act Section 15(b)(5) (15 U.S.C. 78*o*(b)(5)) and Rule 15b6–1 (17 CFR 240.15b6–1) thereunder.

delaying provision would provide time to evaluate whether a withdrawal is the result of a legitimate winding down of a funding portal's business or whether there are additional factors to consider in connection with the funding portal's withdrawal that are relevant to the protection of investors. Based on such information, we would determine whether any actions, including enforcement proceedings, should be taken against the withdrawing funding portal.

The proposed rules [534] provide that each application for registration, amendment thereto, successor registration or withdrawal would be considered filed when a complete Form Funding Portal is submitted with the Commission or its designee. The proposed rules also require duplicate originals of the application to be filed with surveillance personnel designated by the registered national securities association of which the funding portal is a member.

Under the approach to registration that we are proposing, and as described by the requirements of proposed Form Funding Portal (discussed below), a funding portal would be able to operate multiple Web site addresses under a single funding portal registration, provided the funding portal discloses on Form Funding Portal all the Web sites and names under which it does business. Allowing for multiple Web site addresses might allow a funding portal to customize each address to fit its specific needs, such as appealing to certain industries or investors while reducing regulatory costs. We recognize that permitting multiple Web site addresses by a single registrant could result in investors being confused about the identity of the registrant. We believe, however, that the potential for confusion is justified by the value of the additional flexibility afforded to intermediaries.[535]

One commenter requested that we implement a system similar to the BrokerCheck system operated by FINRA for registered funding portals.[536] We are not proposing that the Commission create such a system at this time because, as discussed below, the information in a funding portal's completed Form Funding Portal would be available for public viewing through the Commission's Web site or other such electronic system, as determined by the Commission in the future, subject to the redaction of certain personally identifiable information, or other information with a significant potential for misuse, of the contact person(s) or other identified individuals of the funding portal.

Request for Comment

189. Is the proposed method for registration appropriate? Why or why not? Are there methods that would be less burdensome to potential funding portals while not impairing investor protection? If so, what are those methods?

190. Should we impose other restrictions or prohibitions on affiliations of the funding portal, such as affiliation with a registered broker-dealer or registered transfer agent? If so, what are they and why?

191. Should the Commission, as proposed, permit a funding portal to have multiple intermediary Web sites under a single registration application? Why or why not?

b. Form Funding Portal

A funding portal seeking to register with the Commission would need to file a completed Form Funding Portal with the Commission.[537] We propose to make a blank Form Funding Portal available through the Commission's Web site or such other electronic database, as determined by the Commission in the future.

To access the registration system and enter information on Form Funding Portal, a funding portal would have to first establish an account and obtain credentials (*i.e.,* username and password). We propose that an applicant would need to fill out general user information fields, including name, address, phone number, email address, organization name and employer identification number, and user account information (*i.e.,* username and password), and select and answer a security question. Once accepted by the registration system, the applicant would receive an email notification that the account has been established, and the applicant would be able to access and complete Form Funding Portal. We anticipate that applicants ordinarily would obtain access credentials the same day that they are requested.

In order to complete Form Funding Portal, a funding portal would be required to check a box indicating the purpose for which the funding portal is filing the form:

- To register as a funding portal with the Commission, through an initial application;
- to amend any part of the funding portal's most recent Form Funding Portal, including a successor registration; or
- to withdraw from registration as a funding portal with the Commission.

If the funding portal is submitting an amendment or withdrawing from registration, it also would be necessary to provide the Commission file number assigned to the funding portal at the time of its initial application to register. This information would be used to cross-reference amendments and withdrawals to the original registration, thus allowing Form Funding Portal to be used for the initial application to register, amendments to registration and withdrawal from registration.

We intend proposed Form Funding Portal to be a streamlined version of Form BD. We believe Form BD is an appropriate model for Form Funding Portal, because funding portals are limited purpose brokers that are conditionally exempt from registration as broker-dealers. There are certain questions on Form BD that we believe are not applicable to funding portals. For example, a funding portal is prohibited from holding or maintaining customer funds or securities; therefore, proposed Form Funding Portal, unlike Form BD, does not include any questions about holding customer funds and securities. Funding portals also are restricted in their activities in ways that broker-dealers are not; thus, proposed Form Funding Portal includes particular questions that address these differences. For example, because a funding portal is prohibited from holding and maintaining customer funds, proposed Form Funding Portal would request information about a funding portal's escrow arrangements. As funding portals also are subject to certain compensation restrictions, Form Funding Portal would require a description of the funding portal's compensation arrangements.

Form Funding Portal seeks to strike a balance between efficiency in completing the form and requesting sufficient information from funding portals. The proposed form consists of eight sections, including items related to: identifying information, form of organization, successions, control persons, disclosure information, non-securities related business, escrow, and compensation arrangements, and withdrawal. These items would require an applicant to provide certain basic

[534] *See* proposed Rule 400(e) of Regulation Crowdfunding.

[535] We note that brokers are currently required to prominently disclose in any retail communications their name, or the name under which their broker-dealer business is primarily conducted as disclosed on their registration form. *See* FINRA Rule 2210(d)(3).

[536] *See* CFIRA Letter 2.

[537] *See* proposed Rule 400(a) of Regulation Crowdfunding.

identifying and contact information concerning its business; list its direct owners and executives; identify persons that directly or indirectly control the funding portal, control the management or policies of the funding portal and persons the funding portal controls; and supply information about its litigation and disciplinary history and the litigation and disciplinary history of its associated persons.[538] In addition, an applicant would be required to describe any non-securities related business activities and supply information about its escrow arrangements, compensation arrangements with issuers and fidelity bond.[539] Upon a filing to withdraw from registration, a funding portal would be required to provide certain books and records information. In addition, as discussed in detail below,[540] applicants that are incorporated in or organized under the laws of a jurisdiction outside of the United States or its territories, or whose principal place of business is not in the United States or its territories, would be required to complete Schedule C to Form Funding Portal, which requires information about the applicant's arrangements to have an agent for service of process in the United States, as well as an opinion of counsel addressing the ability of the applicant to provide the Commission and the national securities association of which it is a member with prompt access to its books and records and to submit to onsite inspection and examination by the Commission and the national securities association.

We propose that a person duly authorized to bind the funding portal be required to sign Form Funding Portal in order to execute the documents.[541] A person executing Form Funding Portal and Schedule C (if applicable) would be required to represent that the person has executed the form on behalf of, and is duly authorized to bind, the funding portal; the information and statements contained in the form and other information filed are current, true and complete; and if the person is filing an amendment, to the extent that any information previously submitted is not amended, such information is currently accurate and complete.[542] The funding portal also would be required to consent that service of any civil action brought by, or notice of any proceeding before, the Commission or any national securities association of which it is a member, in connection with the funding portal's investment-related business, may be given by registered or certified mail to the funding portal's contact person at the main address, or mailing address, on the form.[543]

We believe that this information is important for our oversight of funding portals, including, among other things, assessing a funding portal's application and performing examinations of funding portals, and that it is pertinent to investors and issuers. We propose to make all current Forms Funding Portal, including amendments and registration withdrawal requests, immediately accessible and searchable by the public, with the exception of certain personally identifiable information or other information with significant potential for misuse (including the contact employee's direct phone number and email address and any IRS Employer Identification Number, social security number, date of birth, or any other similar information).[544] Making these documents publicly available and searchable would enhance transparency of the registration process and the funding portal industry as it develops, while the limited redactions would appropriately protect the privacy of the individuals involved.

Request for Comment

192. What type of web-based registration should the Commission use for accessing Form Funding Portal? Would a system like EDGAR be appropriate, or would a different type of system be preferable? Why?

193. Should we consider alternatives to creating a new form for funding portal registration? Should we amend the existing Form BD to provide for funding portal registration? Why or why not? Which questions on Form BD would be relevant to funding portals and why? Are there other questions we should include for funding portals that are not on the proposed Form Funding Portal or in existing Form BD? If so, which questions and why?

194. Are there types of information (other than personally identifiable information) required by proposed Form Funding Portal that should not be made readily accessible to the public? If so, what types of information and why?

195. Should we require the identifying and contact information requested on Form Funding Portal, or should it be modified in any way? Should additional information be required? If so, which information and why?

196. Are the proposed disclosures in Form Funding Portal unduly burdensome? Are there certain requirements that should be eliminated or modified? Which requirements and why? Would such changes be consistent with investor protection?

197. Should proposed Form Funding Portal be modified to request from funding portals a narrative description of their compliance programs and due diligence procedures with respect to issues? Would some other form of reporting be more useful? Why or why not?

198. Are the proposed representations required of a person who executes Form Funding Portal appropriate? Should the Commission require attestations? If so, from whom?

199. Should we require any other information from a funding portal that is withdrawing from registration?

c. Fidelity Bond

The proposed rules would require, as a condition of registration, that a funding portal have in place, and thereafter maintain for the duration of such registration, a fidelity bond[545] that: (1) Has a minimum coverage of $100,000; (2) covers any associated person of the funding portal unless otherwise excepted in the rules set forth by FINRA or any other registered national securities association of which it is a member; and (3) meets any other applicable requirements, as set forth by FINRA or any other registered national securities association of which it is a member.[546]

Although not mandated by the statute, we believe that a fidelity bond requirement would help insure against the loss of investor funds that might occur if, for example, a funding portal were to violate the prohibition set forth in Section 304(b) of the JOBS Act on holding, managing, possessing or otherwise handling investor funds or securities. This is a meaningful

[538] This information would be used to determine whether to approve an application for registration, to decide whether to revoke registration, to place limitations on the applicant's activities as a funding portal and to identify potential problem areas on which to focus during examinations. If an applicant or its associated person has a disciplinary history, then the applicant could be required to complete the appropriate Disclosure Reporting Page (''DRP''), either Criminal, Regulatory, Civil Judicial, Bankruptcy, Bond or Judgment.

[539] *See* Section II.D.1.c. below.

[540] *See* Section II.D.1.d. below.

[541] *See* execution statement of proposed Form Funding Portal.

[542] *See id.*

[543] *See id.*

[544] *See* the proposed Instructions to Form Funding Portal.

[545] A fidelity bond is a type of insurance that aims to protect its holder against certain types of losses, including but not limited to those caused by the malfeasance of the holder's officers and employees, and the effect of such losses on the holder's capital. *See* Release No. 34–63961 (Feb. 24, 2011) [76 FR 11542 (Mar. 2, 2011)].

[546] *See* proposed Rule 400(f) of Regulation Crowdfunding.

protection because funding portals would not be members of the Securities Investor Protection Corporation (''SIPC''). If a firm is a SIPC member and goes out of business, then the cash and securities held for each customer by that firm are generally protected up to $500,000, including a $250,000 limit for cash.[547] Because funding portals are non-SIPC members,[548] funding portal customers would not receive this SIPC protection. Furthermore, given that we are not proposing to require, pursuant to our discretionary authority, that funding portals be subject to minimum net capital requirements, a fidelity bond would provide a single layer of protection, in the event of such losses. While the proposed rule imposes this requirement as a condition to registration, we anticipate that, like the fidelity bond requirement registered broker-dealers are currently subject to pursuant to SRO rules, specific requirements of the fidelity bond for funding portals would be set forth in rules of FINRA or any other registered national securities association. In recognition of the limits on the amounts investors may invest, and the amounts issuers may raise, through crowdfunding, as provided in Section 4(a)(6), we propose to require that funding portals' fidelity bonds have an amount of coverage that is equivalent to the minimum amount of coverage registered broker-dealers are required to have under FINRA Rule 4360, which is $100,000.[549] Furthermore, we believe that fidelity bond coverage would be most effective if it covers actions by not only the funding portal entity, but also all of its associated persons.

Request for Comment

200. Is it appropriate for us to require a funding portal to have a fidelity bond? Why or why not?

201. With respect to the fidelity bond requirement, is the proposed coverage of $100,000 appropriate for funding portals? If not, what other amount or formula for calculating the required amount would be more appropriate and why?

202. Is it appropriate to require the fidelity bond to cover associated persons of the funding portal? Why or why not?

203. Are there other specific terms of a fidelity bond that we should consider requiring? If so, what terms and why?

204. Apart from requiring a funding portal to have a fidelity bond, is there some other requirement that could be imposed on funding portals, like insurance or something similar to SIPC, which would further protect investors? If so, what type of requirement and why?

d. Requirements for Nonresident Funding Portals

Although there is no statutory requirement that funding portals be domestic entities, we are mindful of our ability to effectively oversee this new category of registrants—as well as more generally the development of the new crowdfunding market and role of intermediaries in that market—given the greater challenges entailed in supervising, examining, and enforcing the requirements that would be applicable to activities of intermediaries based outside the United States.[550] At the same time, we recognize that the use of funding portals located outside the United States could provide more choices for U.S. issuers seeking to engage an intermediary to facilitate a crowdfunding offering, and potentially expand those issuers' access to investors located abroad. In seeking to strike an appropriate balance among these considerations, we propose not to permit nonresident entities to register as funding portals unless they comply with certain conditions designed to provide the Commission and FINRA (or any other registered national securities association) with appropriate tools for supervising such entities.

Under the proposed rules, registration pursuant to Rule 400 of Regulation Crowdfunding by a nonresident funding portal (a funding portal incorporated in or organized under the laws of any jurisdiction outside of the United States or its territories, or having its principal place of business outside the United States or its territories) [551] would be first conditioned upon there being an information sharing arrangement in place between the Commission and the competent regulator in the jurisdiction under the laws of which the nonresident funding portal is organized or where it has its principal place of business that is applicable to the nonresident funding portal. The proposed rules would further require a nonresident funding portal to (1) obtain a written consent and power of attorney appointing an agent for service of process in the United States (other than the Commission or a Commission member, official or employee), upon whom may be served any process, pleadings, or other papers in any action; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, provide the Commission and any national securities association of which it is a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and such national securities association with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and the national securities association.[552]

In general, the requirements for nonresident funding portals that we are proposing are consistent with those we have proposed for other nonresident entities subject to our regulation.[553] These requirements aim to ensure that funding portals that are not based in the United States, or that are subject to laws other than those of the United States, would nevertheless be accessible to us and other relevant regulators for purposes of accessing the books and records of, conducting examinations and inspections of, and enforcing U.S. laws and regulations with respect to, these entities.

Requirements for a nonresident funding portal to obtain an agent for service of process in the United States, and to furnish the Commission with the name and address of this agent, are important to facilitate enforcement of the federal securities laws and the rules thereunder by the Commission and

[547] *See* the Securities Investor Protection Act of 1970, Pub. L. No. 91–598 (1970).

[548] Membership in SIPC applies only to persons registered as brokers or dealers under Section 15(b) of the Exchange Act. *See* 15 U.S.C. 78ccc(a)(2).

[549] *See* FINRA Rule 4360. Introducing brokers, like funding portals, do not hold customer funds and securities. Introducing brokers are required to maintain a minimum bond of $100,000 under current SRO rules, and we are proposing the same minimum amount for funding portals.

[550] The exemption under Section 4(a)(6) is not available for a transaction involving the offer or sale of securities by an issuer that is not organized under and subject to the laws of a State or territory of the United States or the District of Columbia. *See* Section 4A(f), discussed in Section II.A.3 above.

[551] *See* proposed Rule 400(g)(1) of Regulation Crowdfunding.

[552] *See* proposed Rule 400(g) of Regulation Crowdfunding. Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other requirements under [the Exchange Act] as the Commission determines appropriate.''

[553] *See, e.g., Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* Release No. 34–65543 (Oct. 12, 2011) [76 FR 65784 (Oct. 24, 2011)], at 65799–65801. *See also Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* Release No. 34–69490 (May 1, 2013) [78 FR 30968 (May 23, 2013)].

others (*e.g.,* the U.S. Department of Justice and any other agency or entity with law enforcement authority). The proposed rules also would require a registered nonresident funding portal to promptly appoint a successor agent if it discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on its behalf. A registered funding portal must promptly amend Schedule C to its Form Funding Portal if its agent, or the agent's name or address, changes. Finally, the proposed rules would require the registered nonresident funding portal to maintain, as part of its books and records, the agreement with the agent for service of process for at least three years after termination of the agreement.

The proposed rules would require that each nonresident funding portal provide an opinion of counsel and certify, as a matter of law, that it can provide the Commission, and the national securities association of which it is a member, with prompt access to its books and records and submit to onsite inspections and examinations. We believe that this proposed certification and supporting opinion of counsel are important to confirm that each nonresident funding portal is in the position to provide the Commission and the national securities association with information that is necessary for us and the national securities association to effectively fulfill our regulatory oversight responsibilities.[554] Commenters have previously brought to our attention that it may conflict with the laws of certain jurisdictions to provide such an opinion.[555] Failure to make this certification or provide an opinion of counsel would provide a basis to deny an application for registration.

The requirement for an information sharing agreement is designed to provide the Commission greater assurance that it will be able to obtain the information about a nonresident funding portal necessary for the Commission's oversight of the nonresident funding portal. The home country regulator may possess information concerning, for example, the funding portal's affiliations, contractual relationships with issuers, and the nature and extent of measures taken to protect investors. In this context, particularly in the event that evidence arises of potential fraudulent or other unlawful activity by a nonresident funding portal, the ability to obtain information and secure the cooperation of the home country regulator according to established practices and protocols should help to address the increased challenges that may arise from oversight of entities located outside the United States.

A registered nonresident funding portal also would be required to re-certify, on Schedule C to Form Funding Portal, within 90 days after any relevant changes in its legal or regulatory framework, and provide a revised opinion of counsel confirming that, as a matter of law, the entity will continue to meet its obligations to provide the Commission and the national securities association with prompt access to its books and records and to be subject to inspection and examination. Failure to make this certification or provide an opinion of counsel may be a basis for the Commission to revoke the nonresident funding portal's registration.

Request for Comment

205. Is the term nonresident funding portal defined appropriately? If not, how should it be modified? Please explain.

206. Should the Commission impose additional or different conditions for nonresident funding portals than those proposed? If so, what conditions, and why? Should any be eliminated? Why or why not? What effect might such conditions have on the development of the industry and the market, and on issuers and investors? Please explain.

207. If, as a matter of law, it would be impossible or impractical for a nonresident funding portal to obtain the required opinion of counsel, what other actions or requirements could address our concern that we and the national securities association would be able to have direct access to books and records and adequately examine and inspect the funding portal?

208. Should any of the proposed requirements be more specific? For example, should only certain types of entities (such as law firms) be allowed to act as U.S. agents for service of process? Please explain.

209. Should a nonresident funding portal be required to appoint a U.S. agent for purposes of all potential legal proceedings, including those from nongovernmental entities? Why or why not?

210. Should we require the opinion of counsel if it might contradict the laws of a jurisdiction where an intermediary is incorporated? Why or why not? If not, should we impose an alternative requirement?

211. Should we specify that the opinion of counsel contain any additional information? For instance, should we require the opinion to reference the applicable local law or, in the case of an amendment, the manner in which the local law was amended? Please explain.

2. Exemption From Broker-Dealer Registration

Exchange Act Section 3(h)(1) directs the Commission to exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under Exchange Act Section 15(a), provided that the funding portal: (1) Remains subject to the examination, enforcement and other rulemaking authority of the Commission; (2) is a member of a registered national securities association; and (3) is subject to other requirements that the Commission determines appropriate. The proposed rules would exempt a registered funding portal from the broker registration requirements of Exchange Act Section 15(a)(1), in connection with its activities as a funding portal.[556]

But for the exemption from registration Congress directed, a funding portal would be required to register as a broker under the Exchange Act.[557] The obligations imposed under the JOBS Act on an entity acting as an intermediary in a crowdfunding transaction would bring that entity within the definition of ''broker'' under Exchange Act Section 3(a)(4). A funding portal would be ''effecting transactions in securities for the account of others'' by, among other things, ensuring that investors comply with the conditions of Securities Act

[554] *See* Exchange Act Section 3(h)(1)(A).

[555] *See* comment letter from Sarah A. Miller, Chief Executive Officer, Institute of International Bankers, dated August 21, 2013, *available at https://www.sec.gov.edgekey.net/comments/s7-34-10/s73410.shtml. See also* comment letters from Patrick Pearson, European Commission, dated August 21, 2013, and Kenneth E Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, Securities Industry and Financial Markets Association, dated December 16, 2011, *available at https://www.sec.gov.edgekey.net/comments/s7-34-10/s73410.shtml*; comment letter from Carlos Tavares, Vice-Chairman, European Securities and Markets Authority, dated January 17, 2011, *available at http://www.sec.gov/comments/s7-35-10/s73510-19.pdf.*

[556] *See* proposed Rule 401(a) of Regulation Crowdfunding.

[557] *See* Exchange Act Section 3(a)(4)(A) [15 U.S.C. 78c(a)(4)(A)] (defining ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others''). An entity acting as an intermediary in the offer and sale of securities pursuant to Section 4(a)(6), as contemplated in Title III of the JOBS Act, would not come within the meaning of ''dealer,'' which is defined in Exchange Act Section 3(a)(5)(A) (15 U.S.C. 78c(a)(4)(A)), because it would not be engaging in the business of buying and selling securities for its own account. *See also* Exchange Act Section 15(a) [15 U.S.C. 15*o*(a)] and proposed Rule 300(b) of Regulation Crowdfunding.

Section 4A(a)(4) and (8), making the securities available for purchase through the funding portal, and ensuring the proper transfer of funds and securities as required by Securities Act Section 4A(a)(7).[558] In addition, a funding portal's receipt of compensation linked to the successful completion of the offering also would be indicative of acting as a broker in connection with these transactions.

Pursuant to Exchange Act Section 3(h)(1), as stated above, we are proposing rules that would exempt an intermediary that is registered as a funding portal from the requirement to register as a broker-dealer under Exchange Act 15(a)(1). Consistent with the JOBS Act, the funding portal would remain subject to the full range of our examination and enforcement authority.[559] In this regard, the proposed rules would require that a funding portal permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by representatives of the Commission, and of the national securities association of which it is a member.[560] The proposed rules also would impose certain recordkeeping requirements.[561]

The proposed rules would provide that, notwithstanding this exemption from broker registration, for purposes of Chapter X of Title 31 of the Code of Federal Regulations, a funding portal would be deemed to be ''required to be registered'' as a broker with the Commission under the Exchange Act, thereby requiring funding portals to comply with Chapter X, including certain anti-money laundering (''AML'') provisions thereunder.[562]

Request for Comment

212. Is the proposed exemption for funding portals from broker registration appropriate? Why or why not?

213. Should the exemption be conditioned on the funding portal remaining in compliance with Subpart D of the proposed rules? Why or why not?

214. Is it appropriate to propose to require funding portals to comply with the same requirements for purposes of Chapter X of Title 31 of the Code of Federal Regulations as imposed on a person required to be registered as a broker or a dealer? Why or why not?

215. Should the proposed exemption from broker registration be conditioned upon a funding portal's compliance with applicable Subpart C and D rules of proposed Regulation Crowdfunding? Why or why not? Should the failure to comply with certain requirements cause a funding portal to lose its exemption? If so, which requirements and why? Under what circumstances should the Commission consider revoking the exemption of a funding portal that fails to comply with these requirements?

3. Safe Harbor for Certain Activities

Exchange Act Section 3(a)(80) provides that a funding portal may not offer investment advice or make recommendations; solicit purchases, sales or offers to buy the securities offered or displayed on its platform or portal; compensate employees, agents or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform or portal; hold, manage, possess or otherwise handle investor funds or securities; or engage in such other activities as the Commission, by rule, determines appropriate.

We received a number of comments concerning the scope and definition of permissible activities for a funding portal. A number of commenters sought guidance on services they might be permitted to provide consistent with the prohibition on offering investment advice or recommendations.[563] We also received comments seeking clarification about the prohibitions on funding portals soliciting investors and handling funds and securities.[564]

One commenter asked us to clarify what activities would constitute prohibited investment advice and suggested that the Commission should establish ''bright lines'' that would make it clear how a funding portal can avoid being viewed as giving prohibited investment advice.[565] This commenter and others provided numerous examples of potential funding portal activities, including:

- Advising issuers on the structure and contents of their offerings; [566]
- providing access to the portal's platform to certain issuers and rejecting or removing others, based on criteria such as the ''type'' or ''market characteristics'' of the offerings (*e.g.,* film production securities, women- or minority-owned businesses or businesses in specific geographical areas); [567]
- removing an offering before the end of the offering period for lack of investor interest; [568]
- removing an issuer for failing to provide documents responsive to the funding portal's due diligence or qualification standards, including standards other than those established by our rules,[569] or the portal's belief

[558] At the same time, there are statutory restrictions on the scope of services that a funding portal could provide. Among other things, a funding portal could act as an intermediary only in transactions involving the offer or sale of securities pursuant to Securities Act Section 4(a)(6). Further, a funding portal, by definition, could not offer investment advice or recommendations; solicit purchases, sales, or offers to buy the securities offered or displayed on its Web site or portal; compensate persons for such solicitation or based on the sale of securities displayed or referenced on its Web site or portal; or hold manage, possess or otherwise handle investor funds or securities. *See generally* Exchange Act Section 3(a)(80).

[559] *See* Exchange Act Section 3(h)(1)(C). *See also* Securities Act Section 20 [15 U.S.C. 77t] and Exchange Act Sections 21 and 21C [15 U.S.C. 78u and 78u–3]. In addition, we highlight that Exchange Act Sections 15(b)(4) and 15(b)(6) (15 U.S.C. 78*o*(b)(4) and 78*o*(b)(6)) apply to brokers (including funding portals) regardless of whether or not they are registered with the Commission as brokers. Exchange Act Section 15(b)(4) authorizes the Commission to bring administrative proceedings against a broker when the broker violates the federal securities laws (and for other misconduct) and provides for the imposition of sanctions, up to and including the revocation of a broker's registration. Exchange Act Section 15(b)(6) provides similar enforcement authority against the persons associated with a broker, including barring persons from associating with any Commission registrant. *See* Section II.D.3 below for further discussion, in response to commenters' concerns, about the scope of permissible activities in which funding portals may engage under the safe harbor of proposed Rule 402.

[560] *See* proposed Rule 403 of Regulation Crowdfunding. *See also* discussion in Section II.D.4 below.

[561] *See* proposed Rule 404 of Regulation Crowdfunding. *See also* discussion in Section II.D.5 below.

[562] *See* 31 CFR 1010.100(h) and 1023.100(b) (defining broker or dealer for purposes of the applicability of AML requirements). *See* Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act (''BSA'')) [12. U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5330]. *See also* proposed Rule 403(b) of Regulation Crowdfunding and discussion in Section II.D.4 below. Securities Act Section 4A(a)(12) requires intermediaries to comply with requirements as the Commission may, by rule, prescribe for the protection of investors and in the public interest. As discussed in Sections II.C.1 and II.D.2 above, a funding portal is a broker that, in the absence of the exemption from the requirement to register as a broker or dealer provided for under the JOBS Act in Exchange Act Section 3(h)(1), would otherwise be required to register as a broker under Section 15(a) (15 U.S.C. 78*o*) of the Exchange Act, and by being so registered, would be subject to the full range of BSA obligations applicable to registered broker-dealers. As discussed further in Section II.D.4.b below, we believe such obligations also should be imposed on funding portals.

[563] *See, e.g.,* NCA Letter; NSBA Letter; CFIRA Letter 2.

[564] *See, e.g.,* CFIRA Letter 2; NCA Letter; Wright Letter 1; RocketHub Letter 1; Grow VC Letter.

[565] *See* CFIRA Letter 2.

[566] *See id.*

[567] *See* NCA Letter; NSBA Letter.

[568] *See id.*

[569] *See id.*

that an offering or the issuer may be fraudulent or abusive;[570]
- highlighting, or otherwise making more prominent, the offering(s) of one or more issuers;[571]
- organizing issuers listed on the funding portal's platform into groups based on the funding portal's view of the riskiness of the investment;[572]
- providing information management tools (*i.e.,* search functions and automatic notification mechanisms) on the funding portal's platform;[573]
- providing a ''valuation framework'' that could guide investors in determining a fair valuation for securities listed on the funding portal's platform, while also creating a ''negotiation space'' for an issuer and its potential investors;[574] and
- hosting on the funding portal's platform:
  - third-party market and news updates;[575]
  - third-party opinions (including those of investors) on message boards and other information exchanges moderated by the funding portal;[576] or
  - judgments about issuers made by a funding portal or its vendors or partners.[577]

With regard to the prohibition on solicitation, one commenter noted that the mere act of having a web platform available to the public on which issuers can list their offerings could be viewed as impermissible solicitation.[578] Another commenter asked whether funding portals would be permitted to compensate employees and agents to solicit issuers by commission, referral fee or otherwise.[579] Another commenter asked that we preserve the ability of funding portals to pay for search listings or advertisements in online social networks.[580]

Commenters requested that we identify the kinds of third parties that could hold, manage, possess or otherwise handle investor funds and securities in connection with an offering made in reliance on Section 4(a)(6).[581] One commenter stated that a fiduciary would likely hold the funds for disposition as instructed by the funding portal and asked whether this instruction would constitute an impermissible handling of the funds.[582] Another commenter stated that an intermediary should be authorized by the issuer and investors to operate as an escrow agent to facilitate transactions.[583] One commenter asserted that funding portals need the ability to temporarily hold customer funds to properly clear and settle a securities transaction.[584] The commenter further contended that, to ensure issuers are not overwhelmed with thousands of new shareholders, intermediaries, including funding portals, should be able to act as nominees of the investors who are the beneficial owners of the securities.

In light of these questions and comments, we are proposing to provide a non-exclusive, conditional safe harbor for funding portals that engage in certain limited activities.[585] Failure of a funding portal to meet the conditions of this non-exclusive safe harbor would not create a presumption that the funding portal is in violation of the statutory prohibitions of Exchange Act Section 3(a)(80) or the rules in proposed Regulation Crowdfunding.[586]

In proposing the safe harbor, we are mindful that, while Section 304 of the JOBS Act directs us to exempt a registered funding portal, conditionally or unconditionally, from broker-dealer registration and associated regulatory requirements, the statutory provisions also make clear that the activities in which a funding portal may engage are far more limited than those of a registered broker-dealer.[587] At the same time, we recognize that the statutory prohibitions could be read so broadly as to limit the utility of funding portals. The proposed rule seeks to strike an appropriate balance by identifying certain limited activities in which a funding portal may engage, consistent with the statutory prohibitions.[588] These activities relate to:

- Limiting offerings made on or through the funding portal's platform based on eligibility requirements;
- highlighting and displaying offerings on the platform;
- providing communication channels for potential investors and issuers;
- providing search functions on the platform;
- advising issuers on the structure or content of offerings;
- compensating others for referring persons to the funding portal and for other services; and
- advertising the funding portal's existence.

In addition, the proposed rules would clarify that, consistent with other provisions of Regulation Crowdfunding,[589] funding portals may deny access to issuers in certain circumstances, accept investment commitments and direct the transmission of funds, in connection with offerings conducted on their platforms.

■ Limiting Offerings

We anticipate that some funding portals may wish to limit, to some extent, the scope of their businesses by, for example, specializing in offerings by issuers in certain industries or geographic locations. In some

[570] *See* CFIRA Letter 3.

[571] *See* RocketHub Letter 1; Wright Letter 1.

[572] *See id.*

[573] *See* CFIRA Letter 3.

[574] A ''negotiation space'' would provide some ability for investors to set or influence the price of the securities, which would not necessarily depend on a specific valuation of the securities. *See* Pearfunds Letter.

[575] *See* RocketHub Letter 1; Wright Letter 2.

[576] *See* CFIRA Letter 3; Applied Dynamite Letter; Grow VC Letter.

[577] *See* Applied Dynamite Letter.

[578] *See* Crowdfunding Offerings Ltd. Letter 2.

[579] *See* NCA Letter.

[580] *See* Cera Technology Letter.

[581] *See* Crowdfunding Offerings Ltd. Letter 2; NSBA Letter.

[582] *See* Crowdfunding Offerings Ltd. Letter 4.

[583] *See* RocketHub Letter 1 (further stating that the intermediary should be permitted to hold investor funds in an escrow account that is segregated from the operating funds of the intermediary and that withdrawals from the account only be permitted for: ''payments to offerings that have successfully closed (having reached or exceeded their funding goals); payments to investors requesting refunds of uncommitted funds; or payment of established intermediary fees'').

[584] *See* Grow VC Letter.

[585] *See* proposed Rule 402 of Regulation Crowdfunding. The term ''investment advice'' is not defined in the crowdfunding provisions of the JOBS Act or otherwise in the federal securities laws, and we do not include a definition of that term in our proposal. In the context of interpreting the term ''investment adviser,'' the determination of whether a particular communication rises to the level of investment advice depends on the facts and circumstances and is construed broadly. To the extent a funding portal limits its securities activities to those permitted by the proposed rules, including the safe harbor, we preliminarily believe that it would not come within the meaning of the term investment adviser under the Advisers Act. If it conducts other activities, such as advising an issuer concerning the investment of proceeds in securities, however, it would need to consider whether it comes within the meaning of that term under the Advisers Act. *See* Advisers Act Section 202(a)(11) [15 U.S.C. 80b–2(a)(11)]. *See also* 2012 SEC Government-Business Forum, note 29 (stating that there is a need for safe harbors that explicitly permit certain activities that may otherwise be seen as indicia of broker-dealer status or activities that are prohibited or otherwise subject to separate regulation).

[586] *See* proposed Rule 402(a) of Regulation Crowdfunding.

[587] *See* Exchange Act Section 3(a)(80). *See also* 158 Cong. Rec. S5474–03 (daily ed. July 26, 2012) (statement of Sen. Jeff Merkley) (''The Crowdfund Act is designed so that funding portals will be subject to fewer regulatory requirements than broker-dealers because they will do fewer things than broker-dealers. Among other limits, the law prohibits funding portals from engaging in solicitation, making recommendations, and providing investment advice. Relative passivity and neutrality, especially with respect to the investing public, are touchstones of the funding portal streamlined treatment.'').

[588] *See* proposed Rule 402 of Regulation Crowdfunding.

[589] *See, e.g.,* proposed Rules 303(d) and 303(e) of Regulation Crowdfunding.

circumstances, these limitations could be viewed as providing investment advice. To accommodate reasonable limitations, the proposed safe harbor would permit a funding portal to apply objective criteria to limit the offerings on its platform, without being deemed to be providing investment advice.[590] Those criteria would be required to be reasonably designed to result in a broad selection of issuers offering securities through the funding portal's platform and be applied consistently to all potential issuers and offerings, so as not to recommend or implicitly endorse one issuer or offering over others. The criteria also would be required to be clearly displayed on the funding portal's platform.

The requirements that the objective criteria be reasonably designed to result in a broad selection of issuers, and be applied consistently, are intended to ensure that the funding portal does not provide impermissible investment advice by, for example, applying criteria that would so limit the number of issuers that the funding portal could be viewed as providing an implicit endorsement or recommendation of those issuers' offerings. An issuer that meets these criteria, and is not otherwise disqualified, would, subject to the funding portal's measures to reduce the risk of fraud under proposed Rule 301,[591] be eligible to list its offering on the funding portal's platform.

One criterion could include the type of security being offered (such as common stock, preferred stock or debt securities). We believe that this criterion would be appropriate because potential investors may be interested in certain types of securities as a consideration separate from the identity of issuers. Other criteria also could include the geographic location of the issuer or the industry or business segment of the issuer. We believe that these criteria would be appropriate because a funding portal may wish to specialize and focus its efforts on facilitating offerings in particular areas or industries.[592] The proposed rule would require funding portals to disclose to investors the criteria they use to limit the offerings available on their platforms. This should help investors better appreciate any niche focus of a funding portal and the scope of the offerings available on the funding portal's platform. In addition, we recognize that a funding portal may seek to limit the number of issuers or offerings on its platform at any given time, including for resource reasons. The application of the objective criteria could, in practice, result in the number of issuers or offerings displayed on the platform being very small, such as, for example, in the period soon after a funding portal begins operations. Nevertheless, we would not consider the funding portal to be providing investment advice if the objective criteria are designed to result in a broad selection of issuers.

To qualify for the safe harbor, a funding portal may not use criteria based on an assessment of the merits or the shortcomings of a particular issuer or offering. In particular, a funding portal may not deny access to an issuer based on the advisability of investing in the issuer or its offering.[593] As noted above, one commenter stated that the prohibition on investment advice could potentially preclude a funding portal from denying access to a fraudulent offering or issuer.[594] This would place investors at unnecessary risk and would be contrary to the funding portal's obligation under the proposed rules to deny access to its platform if it believes that the issuer or its offering presents potential for fraud or otherwise raises concerns regarding investor protection.[595] Thus, as described above, a funding portal must deny access if it believes that the issuer or its offering has potential for fraud or otherwise raises concerns regarding investor protection.[596]

■ Highlighting Issuers and Offerings

Under the proposed rules, a funding portal may highlight particular offerings of securities made in reliance on Section 4(a)(6) on its platform based on objective criteria that may include: the type of securities being offered (*e.g.,* common stock, preferred stock or debt securities); the geographic location of the issuer; the industry or business segment of the issuer; the number or amount of investment commitments made; and the progress in meeting the target offering amount or, if applicable, the maximum offering amount, and minimum or maximum investment amount.[597] A potential investor, for example, may have a strong interest in supporting a small issuer that is within the potential investor's geographic vicinity. Other potential investors may be interested in offerings that are about to close soon, that have particular maximum investment amounts or that have generated significant interest from users of the funding portal's platform. Some investors may only be interested in offerings in which a significant percentage of the target amount has been committed.[598] We believe that the listed criteria are sufficiently objective, so as to reduce the risk of a funding portal applying them to advance a particular bias or subjective assessment of the issuers or offerings.

Consistent with the prohibition on investment advice and recommendations, the criteria must be reasonably designed to highlight a broad selection of issuers, so as not to recommend or implicitly endorse one issuer or offering over another, and must be applied consistently to all potential issuers and offerings. The selection criteria may not be based on an assessment of the merits of a particular issuer or offering and must be clearly displayed on the funding portal's platform, to permit investors to comprehend on what basis certain issuers are being highlighted, and, thereby, to help prevent them from misconstruing the highlighting as a recommendation or implicit endorsement of any issuer or offering. The funding portal may not highlight an issuer or offering based on the advisability of investing in the issuer or offering. To help prevent conflicts of interest and incentives for funding portals to favor certain issuers over others, the proposed rules would prohibit a funding portal from receiving any special or additional compensation for highlighting (or offering to highlight) one or more issuers or offerings on its platform.[599]

Some commenters sought clarification whether funding portals could distinguish offerings based on riskiness.[600] We are not proposing a safe harbor for this type of distinction at this time, because we preliminarily believe that an assessment of risk necessarily

[590] *See* proposed Rule 402(b)(1) of Regulation Crowdfunding.

[591] *See* discussion in Section II.C.3 above.

[592] *See, e.g.,* CrowdFund Connect Letter (stating that rural communities could build new local based co-operatives similar to the electric and telephone cooperatives for new technologies).

[593] Of course, a funding portal would be required to deny access to the issuer if the funding portal has a reasonable basis for believing that issuer is subject to a disqualification or if the funding portal believes that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection. *See* proposed Rule 301(c) of Regulation Crowdfunding.

[594] *See* CFIRA Letter 3.

[595] *See* proposed Rule 301 of Regulation Crowdfunding.

[596] Consistent with proposed Rule 301, proposed Rule 402(b)(10) of Regulation Crowdfunding would clarify that a funding portal may deny access to an issuer if the funding portal believes that the issuer or its offering has potential for fraud or otherwise raises concerns regarding investor protection.

[597] *See* proposed Rule 402(b)(2) of Regulation Crowdfunding.

[598] *See* Howe, note 2.

[599] *See* proposed Rule 402(b)(2)(iii) of Regulation Crowdfunding.

[600] *See* RocketHub Letter 1; Wright Letter 1.

involves the exercise of judgment indicative of the giving of investment advice.

▪ Providing Search Functions

The proposed rules would permit a funding portal to provide, on its platform, search functions or other tools that users could use to search, sort or categorize the offerings available on the funding portal's platform according to objective criteria.[601] Search functions could help potential investors to more efficiently search for offerings that focus on a specific industry, funding goal or other criteria. Under the proposed rules, a funding portal also would be able to categorize offerings into general subject areas, so that a potential investor could readily find those offerings on the funding portal's platform. The proposed rules would also permit more granular tools that, for example, could provide a potential investor the ability to sort offerings based on a combination of different criteria, such as by the percentage of the target offering amount that has been met, geographic proximity to the investor and number of days remaining before an offering is to close.[602] The objective criteria specified in the proposed rules are consistent with those in the proposed safe harbor for highlighting issuers and offerings.[603] Consistent with the activities specifically prohibited by statute, funding portals would not be permitted to use criteria that search, sort or categorize offerings based on the advisability of investing in the issuer or its offering or an assessment of any characteristic of the issuer, its business plan, its management, or risks associated with an investment. One commenter questioned whether a funding portal could give potential investors the ability to create automated email notifications, based on criteria they have provided to identify particular offerings on the funding portal's platform.[604] The proposed rules would permit funding portals to do so.

We recognize that there are many potential ways that a tool or mechanism can be used to search, sort or categorize offerings. The proposed rules are intended to be sufficiently broad to cover any number of combinations of implementing tools or mechanisms for a search, while limiting the search parameters to objective criteria.

▪ Providing Communication Channels

The proposed rules would permit a funding portal to provide, on its platform, communication channels by which investors could communicate with one another and with representatives of the issuer about offerings of securities displayed on the funding portal's platform, in accordance with the conditions set out in proposed Rule 303(c).[605] The safe harbor would specify that a funding portal (including its associated persons, such as its employees) may not participate in these communications, other than to establish guidelines about communication and to remove abusive or potentially fraudulent communications. For the reasons discussed above, a funding portal would be required to make communication channels available to the general public and to restrict the posting of comments on those channels to those who have accounts.[606] In addition, the funding portal would need to require persons posting comments to disclose, in the channel, whether they receive or would receive any compensation for promoting an issuer.

Communication channels should facilitate the access to information among members of the public and provide potential investors with the crowd's insight as to the merits of an issuer or business plan.[607] Restricting funding portal participation should help to ensure that funding portals do not provide impermissible recommendations or investment advice. Moreover, requiring potential investors to have accounts with the funding portal before posting a comment should provide a control that could aid in promoting accountability for comments made and help ensure that interested persons, such as those associated with the issuer or receiving compensation to promote the issuer, are properly identified.[608]

As suggested by commenters, the proposed rule would permit a funding portal to create a ''negotiation space'' in which those who have opened accounts with the funding portal and issuers could discuss and potentially negotiate certain aspects of the issuer's offering, including the price of the issuer's securities.[609]

▪ Advising Issuers

The proposed rules would permit a funding portal to advise an issuer about the structure or content of the issuer's offering, including preparing offering documentation.[610] This advice is not the type of advice that we believe should be impermissible.[611] We also believe that funding portals and brokers could provide certain services to issuers in order to facilitate the offer and sale of securities in reliance on Section 4(a)(6), and without this kind of advice to issuers, crowdfunding as a method to raise capital would not be viable. In particular, to the extent that the issuers that may choose to conduct offerings in reliance on Section 4(a)(6) would include startups and small businesses, we expect that these issuers would seek in many cases to obtain advice on the structure of the offering from intermediaries. Funding portals would be in a position to provide this type of assistance relatively efficiently, together with the other services under the proposed rules that they would be permitted to provide to issuers.

The proposed safe harbor would permit funding portals to advise an issuer about the structure and content of the issuer's offering in a number of ways. A funding portal could, for example, provide pre-drafted templates or forms for an issuer to use in its offering that would help it comply with its proposed disclosure obligations.[612]

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[601] *See* proposed Rule 402(b)(3) Regulation Crowdfunding. *See also* 158 Cong. Rec. 2231 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''Funding portals should be allowed to organize and sort information based on certain criteria. This will make it easier for individuals to find the types of companies in which they can potentially invest. This type of capability—commonly referred to as curation—should not constitute investment advice.'').

[602] *See* proposed Rule 402(b)(3) of Regulation Crowdfunding.

[603] *See* proposed Rule 402(b)(2)(ii) of Regulation Crowdfunding.

[604] *See* CFIRA Letter 3.

[605] *See* proposed Rule 402(b)(4) of Regulation Crowdfunding.

[606] *See* discussion in Section II.C.5.c above and proposed Rule 303(c)(2) of Regulation Crowdfunding.

[607] *See, e.g.,* Bradford, note 1. *See also* Howe, note 2.

[608] *See* 158 Cong. Rec. S2231 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''In addition to facilitating communication between issuers and investors, intermediaries should allow fellow investors to endorse or provide feedback about issuers and offerings, provided that these investors are not employees of the intermediary. Investors' credentials should be included with their comments to aid the collective wisdom of the crowd.'') *See also* discussion in Section II.C.5.c above.

[609] *See* Pearfunds Letter; CFIRA Letter 3.

[610] *See* proposed Rule 402(b)(5) of Regulation Crowdfunding.

[611] *Compare Registration of Municipal Advisors,* Release No. 34–63576 (Dec. 10, 2010) [76 FR 824 (Jan. 6, 2011)] (noting that Commission staff has taken the position that financial advisors that limit their advisory activities to advising municipal issuers as to the structuring of their financings, rather than providing advice for compensation regarding the investment of assets, may not need to register as investment advisers).

[612] *See, e.g.,* 158 Cong. Rec. S2231 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''Similarly, funding portals should be allowed to engage in due diligence services. This would include providing templates and forms, which will enable issuers to comply with the underlying statute. In crafting this law, it was our intent to allow funding portals to provide such services.'');

Continued

Other examples of permissible assistance could include, as commenters have suggested, advice about the types of securities the issuer can offer, the terms of those securities and the procedures and regulations associated with crowdfunding.[613]

▪ Paying for Referrals

The proposed rules would clarify that, consistent with proposed Rule 305, a funding portal could compensate a third party for referring a person to the funding portal if the third party does not provide the funding portal with personally identifiable information of any potential investor. For example, a third party could provide hyperlinks to a funding portal in order to inform potential investors learn about securities offerings made in reliance on Section 4(a)(6). Any compensation, unless paid to third party that is a registered broker or dealer, could not be based, directly or indirectly, on the purchase or sale of a security offered in reliance on Section 4(a)(6) on or through the funding portal's platform.[614] Otherwise, such transaction-based compensation could trigger broker-dealer registration requirements. We also believe that this prohibition on transaction-based compensation would help to remove the incentive for high-pressure sales tactics and other abusive practices.[615]

▪ Compensation Arrangements With Registered Broker-Dealers

The proposed rules would specify that a funding portal could enter into certain arrangements with a registered broker-dealer, through which they could compensate each other for services.[616] In speaking with industry participants, we understand that because the statute narrowly defines the permissible activities in which funding portals may engage, funding portals may wish to contract or affiliate with registered broker-dealers, which are not subject to similar constraints.[617] For example, a registered broker-dealer could, among other things, recommend securities offered on the funding portal's platform or provide services involving the handling of investor funds and securities. Conversely, funding portals may wish to offer certain services, including information technology services, to a broker-dealer, for a fee. Each party to this type of arrangement would, because it is a regulated entity, need to comply with all applicable regulations, including the rules of the registered national securities association of which it is a member.

Proposed Rule 402(b)(7) would permit a funding portal to pay or offer to pay compensation to a registered broker or dealer for services in connection with the funding portal's offer or sale of securities in reliance on Section 4(a)(6). Proposed Rule 402(b)(8) would permit a funding portal to provide services to and receive compensation from a registered broker-dealer in connection with the funding portal's offer or sale of securities in reliance on Section 4(a)(6).[618] Compensation could include any monetary form of payment, such as fees, discounts, commissions, concessions, reimbursement of expenses and other allowances. The proposed safe harbor would not, however, permit a funding portal to receive transaction-based compensation for referrals of potential investors in other types of offerings being effected by a registered broker-dealer, such as a Rule 506 offering.[619] The proposed rules would require the funding portal to provide any services pursuant to a written agreement with the registered broker-dealer, and they also would require the payments to be compliant with, and not prohibited by, the rules of the registered national securities association of which the funding portal is a member.[620] The proposed rules would require that a funding portal's offers to pay, and payments made to, a registered broker-dealer, as well as a funding portal's receipt of compensation from a registered broker-dealer, under these arrangements, be compliant with Regulation Crowdfunding. In particular, these arrangements would have to be compliant with proposed Rule 305 which prohibits, with certain exceptions, an intermediary from compensating any person for providing the intermediary with the personally identifiable information of any investor or potential investor.[621] These proposed provisions, taken as a whole, are intended to facilitate intermediaries' cooperation with each other and promote the use of the Section 4(a)(6) exemption to raise capital, while maintaining a clear audit trail.

▪ Advertising

The proposed rules would permit a funding portal to advertise its existence and engage in certain other limited advertising activities.[622] The proposed rule does not limit the manner in which a funding portal could advertise its existence. A funding portal may, for example, choose to advertise through social media, internet advertisements or traditional sources of advertising like print media.

In addition, funding portals could identify issuers and offerings in the advertisements on the basis of criteria that are reasonably designed to identify a broad selection of issuers (so as not to recommend or implicitly endorse one issuer or offering over others) and are applied consistently to all potential issuers and offerings. The criteria, consistent with those described above with regard to highlighting issuers and offerings on the platform and the ability to provide investors with search functions, could include the type of securities being offered, the geographic location of the issuer, the industry or business segment of the issuer, the number or amount of investment commitments made, the progress in meeting the issuer's target offering amount and, if applicable, the maximum offering amount and the minimum or maximum investment amount.[623] Of course, a funding portal is subject to the statutory prohibition on providing investment advice and recommendations, and soliciting, and so

158 Cong. Rec. S5474–03 (daily ed. July 26, 2012) (statement of Sen. Jeff Merkley) (''Subject to such limits as the SEC determines necessary for the protection of investors and the crowdfunding issuers, funding portals should be able to provide (or make available through service providers) services to assist entrepreneurs utilizing crowdfunding, including, for example, providing basic standardized templates, models, and checklists. Enabling them to help small businesses construct simple, standard deal structures will facilitate quality, low-cost offerings.'').

[613] *See* CFIRA Letter 2.

[614] *See* proposed Rule 402(b)(6) of Regulation Crowdfunding. *See also* discussion in Section II.C.7 above. Proposed Rule 305 of Regulation Crowdfunding would implement the prohibition in Section 4A(a)(10).

[615] *See* note 515.

[616] *See* proposed Rules 402(b)(7) and 402(b)(8) of Regulation Crowdfunding.

[617] Exchange Act Section 3(a)(80) limits the permissible securities activities of a funding portal to those in connection with the offer and sale of securities in reliance on Securities Act Section 4(a)(6).

[618] *See also* FINRA, *Payments to Unregistered Persons: FINRA Request Comment on Proposed Consolidated FINRA Rule Governing Payments to Unregistered Persons,* Regulatory Notice 09–69 (Dec. 2009), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120480.pdf.*

[619] Receipt of transaction-based compensation in connection with such referrals could cause a funding portal to be a broker required to register with us under Exchange Act Section 15(a)(1) (15 U.S.C. 78*o*(a)(1)).

[620] *See, e.g.,* FINRA Rule 4311 (''Carrying Agreements'').

[621] *See* proposed Rule 305 of Regulation Crowdfunding and discussion in Section II.C.7 above.

[622] *See* proposed Rule 402(b)(9) of Regulation Crowdfunding.

[623] As a funding portal could be subject to liability for fraud, it would need to consider whether its advertisements are not misleading or otherwise fraudulent, such as by implying that past performance of offerings on its platform is indicative of future results. *See* Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

the safe harbor would not permit a funding portal to advertise in such a way that expresses that any of the offerings offered on its platform are of a higher quality, are safer, or are more worthy investments compared to any others, whether offered on its platform or those of other intermediaries.

The proposed rule would also specify that the funding portal could not receive special or additional compensation for identifying an issuer or offering in its advertisement, because this could create an incentive for the funding portal to promote one issuer over another. This prohibition should help to limit the dissemination of information that may be misleading or easily misconstrued.[624]

▪ Denying Access Based on Potential Fraud or Investor Protection Concerns

In light of the comments received, the proposed rules would require a funding portal to deny access to its platform to, or cancel an offering of, an issuer that the funding portal believes may present the potential for fraud or otherwise raises concerns regarding investor protection, as is required under proposed Rule 301(c).[625]

▪ Accepting Investor Commitments

The proposed rules would permit a funding portal, on behalf of an issuer, to accept investment commitments from potential investors for securities offered in reliance on Section 4(a)(6) by that issuer on the funding portal's platform.[626] Given the breadth of the statutory prohibition on holding, managing, possessing or otherwise handling investor funds or securities, we believe that it is important to clarify the activities, in this area, in which a funding portal may permissibly engage, including with regard to accepting investment commitments.[627]

Although some commenters expressed the view that funding portals should be permitted to handle investor funds and securities in a limited capacity as the issuer's transfer agent or to be the holder of record,[628] we do not believe that these activities would be consistent with the statutory directive in Exchange Act Section 3(a)(80). In our view, a funding portal acting as custodian for securities through a book entry system likely would be engaged in handling or managing securities in violation of the statutory prohibition in Section 3(a)(80).[629]

▪ Directing Transmission of Funds

The proposed rules would provide that a funding portal could fulfill its obligations with respect to the maintenance and transmission of funds and securities, as set forth in proposed Rule 303, without violating the prohibition in Exchange Act Section 3(a)(80)(D).[630] Thus, subject to other applicable rules, a funding portal could direct investors where to transmit funds or remit payment in connection with the purchase of securities offered and sold in reliance on Section 4(a)(6).[631] It also could direct a qualified third party to release the proceeds of an offering to the issuer upon completion of the offering or to return investor proceeds when an investment commitment or offering is cancelled.[632] We believe that these discrete activities would facilitate crowdfunding transactions without exceeding the scope of permissible activities, and without unduly raising investor protection concerns.

Request for Comment

216. Does the proposed safe harbor appropriately define the actions in which a funding portal may engage? Are there other activities that should be addressed in the safe harbor? Are there activities included in the proposed safe harbor that should be modified or eliminated? If so, which activities and why?

217. Are there any additional conditions that should apply to the activities covered under the proposed safe harbor? If so, which conditions, and why?

218. Exchange Act Section 3(a)(80) provides that a funding portal may not offer investment advice, and the proposed rules would provide a conditional safe harbor for certain activities that funding portals may engage in without violating the statutory prohibition on providing investment advice. Is the safe harbor sufficient, or should we provide additional guidance regarding the status of funding portals under the Investment Advisers Act of 1940? Why or why not? Please discuss.

219. Should the proposed safe harbor permit a funding portal to limit the offerings on its platform? If so, are the criteria set forth in the proposed rules appropriate? Why or why not? If not, what other criteria or conditions would be appropriate?

220. Are there any additional criteria that a funding portal should be permitted to use when highlighting issuers and offerings on its platform? If so, which ones and why? Should a funding portal be permitted to highlight issuers and offerings based on criteria that specifically relate to the activities of users on its site, such as offerings that have been viewed by the largest number of visitors to the platform over a particular time period? Why or why not?

221. As a condition of the proposed safe harbor, should we require funding portals to clearly display, on their platforms, the objective criteria they use in limiting or highlighting offerings? Why or why not?

222. Under the proposed safe harbor, should we permit a funding portal to post news, such as market news and news about a particular issuer or industry, on its platform? Why or why not? If so, what restrictions, conditions or other safeguards should apply, in particular so that a funding portal would not be providing impermissible investment advice? For example, are there certain types of news or news feeds that should or should not be permitted, or should we restrict a funding portal from posting only positive news coverage? Should a funding portal be able to freely select the news stories it posts, or should there be some objective criteria? Please explain.

223. Are the proposed limitations on a funding portal advertising its past offerings appropriate? Should we consider other advertising limitations? Should the proposed advertising rules be modified in any other way?

224. Should we permit a funding portal to receive transaction-based compensation for referring potential investors to a registered broker-dealer? Why or why not? If so, should we

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[624] In response to one commenter, we note that this would preserve the ability of funding portals to pay for search listings or advertisements in online social networks. *See* Cera Technology Letter.

[625] *See* proposed Rule 402(b)(10) of Regulation Crowdfunding. *See also* discussion in Section II.C.3 above.

[626] *See* proposed Rule 402(b)(11) of Regulation Crowdfunding.

[627] As described above, we are proposing other measures that would prescribe the requirements for funding portals with respect to the maintenance and transmission of funds, including the use of a qualified third party to hold and transmit investor funds. *See* discussion in Section II.C.5.d above.

[628] *See* Crowdfunding Offerings Ltd. Letter 4; RocketHub Letter 1.

[629] *Cf.* Exchange Act Section 3(a)(23) [15 U.S.C. 78c(a)(23)] (defining ''clearing agency'' as an intermediary who ''acts as a custodian of securities in connection with a system for the central handling of securities'' where the securities may be administered ''by bookkeeping entry without physical delivery of securities certificates'').

[630] We believe the statutory requirements, and the rules we are proposing to implement such requirements, provide clear requirements for the protection of investor funds. In addition, the requirement for the funding portals to maintain a fidelity bond under proposed Rule 400(f) provides an additional protection with respect to investor funds. *See* discussion in Section II.D.1 above. *See also* proposed Rule 400(f) of Regulation Crowdfunding.

[631] *See* proposed Rule 402(b)(12) of Regulation Crowdfunding.

[632] *See* proposed Rule 402(b)(13) of Regulation Crowdfunding.

impose disclosure requirements or other measures to mitigate potential conflicts? What should those requirements be and why? Should we permit a funding portal to receive transaction-based compensation from an affiliate? Why or why not?

225. In addition to transaction-based compensation, are there other types of compensation that we should prohibit funding portals from paying to persons who are not registered broker-dealers? Should we permit, as proposed, funding portals to enter into compensation arrangements with registered broker-dealers or with any other regulated entities? Why or why not? If so, what types of regulated entities should be included? Please explain.

226. Are there circumstances in which a funding portal could provide transfer agent services without handling investor funds or securities? If so, please describe.

227. Should the proposed safe harbor permit a funding portal to engage in any other activities in connection with the required communication channels? Why or why not? If so, which activities and why?

228. Should the proposed safe harbor include other types of activities that potentially could be construed as investment advice? If so, which ones and why? Would an exemption from the Investment Advisers Act of 1940 or other regulatory relief be appropriate in connection with such activities? Are there types of advice an issuer may seek from a funding portal, that would not be considered advice about the structure or content of the issuer's offering? Please explain.

229. Should the agreed-upon terms of an arrangement with a funding portal be required to be documented in a written agreement with the issuer? Are there certain terms that should be included?

230. Should the proposed safe harbor permit funding portals to provide a mechanism by which investors can rate an issuer or an offering? If so, what safeguards, if any, should be required?[633] Should the Commission, as a condition of the safe harbor, limit the ability to rate to persons who have opened an account with the funding portal?[634]

4. Compliance

a. Policies and Procedures

The proposed rules would require a funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and regulations thereunder, relating to its business as a funding portal.[635] Under the proposed rules, a funding portal would have discretion to establish, implement, maintain and enforce those policies and procedures based on its relevant facts and circumstances. We believe that it is important to provide this flexibility in order to accommodate the various business models funding portals may have while at the same time accomplishing the Commission's investor protection goals. We also recognize that FINRA or any other registered national securities association may have separate requirements in this regard. Inherent in the notion of reasonably designed compliance policies and procedures is that a funding portal would promptly update its policies and procedures to reflect changes in applicable rules and regulations, as well as its business practices and the changing marketplace.

Request for Comment

231. Should we specify requirements for funding portals' compliance policies and procedures? Why or why not? If so, what requirements and why?

232. Should we require funding portals to update their policies and procedures to reflect changes in applicable rules and regulations within a specified time period after the change occurs? If so, what time period would be appropriate (*e.g.,* 30 days, 60 days, six months)?

b. Anti-Money Laundering

The proposed rules require that funding portals comply with certain AML provisions,[636] as set forth in Chapter X of Title 31 of the Code of Federal Regulations.[637] We preliminarily believe that funding portals could play a critical role in detecting, preventing, and reporting money laundering and other illicit financing, such as market manipulation and fraud. As discussed in more detail below, we believe it is important for funding portals to comply with BSA requirements, because they would be engaged in a similar business as a category of registered broker-dealers—introducing brokers—which have BSA obligations.[638] Specifically, while a funding portal is prohibited by statute from handling, managing or possessing customer funds or securities, which means it cannot accept cash from customers or maintain custody of customer securities—and an introducing broker typically does not accept cash or maintain custody of customer securities—we believe that a funding portal, like an introducing broker, is in the best position to ''know its customers,'' and to identify and monitor for suspicious and potentially illicit activity at the individual customer level, as compared to the qualified third party, which may not see such activity given its less direct contact with individual customers.[639] We also believe it is important for funding portals to comply with BSA requirements because they would be in engaged in the same business of effecting securities transactions for the accounts of others as registered broker-dealers, which have BSA obligations. To require otherwise could inadvertently steer potential money launders to funding portals.

Moreover, we expect that funding portals would often facilitate offerings of microcap or low-priced securities, which may be more susceptible to fraud and market manipulation.[640] We believe

[633] An intermediary that is a registered broker could provide a mechanism for investors to rate an issuer or offering. *But see Social Media Web sites and the Use of Personal Devices for Business Communications,* FINRA Regulatory Notice 11–39 (Aug. 2011), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p124186.pdf* (noting that a firm is responsible under NASD Rule 2210 for third-party site content if the firm has adopted or has become entangled with the site's content).

[634] Any person who promotes an issuer's offering for compensation, whether past or prospective, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the issuer on the intermediary's platform, must clearly disclose in all communications on the intermediary's platform, respectively, the receipt of compensation and that he or she is engaging in promotional activities on behalf of the issuer. *See* proposed Rule 302(c) of Regulation Crowdfunding.

[635] *See* proposed Rule 403(a) of Regulation Crowdfunding. As a condition to exempting funding portals from the requirement to register as a broker or a dealer under Exchange Act Section 15(a)(1) (15 U.S.C. 78*o*(a)(1)), Exchange Act Section 3(h)(1)(C) provides that registered funding portals must comply with such other requirements as the Commission determines appropriate.

[636] *See* proposed Rule 403(b) of Regulation Crowdfunding. *See also* proposed Rule 401(b) and discussion in Section II.D.2 above, which discusses how funding portals fall within the scope of Chapter X of Title 31 of the Code of Federal Regulations.

[637] *See* note 562.

[638] *See* 31 C.F.R 1023.100 *et seq.*

[639] *See, e.g.,* NASD (n/k/a FINRA), *NASD Provides Guidance To Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law,* Special Notice to Members 02–21 (Apr. 2002), *available at https://www.finra.org/Industry/Regulation/Notices/2002/p003703* (stating that ''introducing brokers generally are in the best position to 'know the customer,' and thus to identify potential money laundering concerns at the account opening stage, including verification of the identity of the customer and deciding whether to open an account for a customer.'').

[640] A number of the Commission's enforcement actions in the BSA area have involved broker-dealers failing to report suspicious activity

that imposing the monitoring and reporting requirements of the BSA on funding portals would establish a valuable oversight, prevention and detection mechanism. The Financial Action Task Force (''FATF''), an intergovernmental body whose objective is to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system, has also identified low-priced and privately-placed securities as potential vehicles for laundering money.[641] As explained by FATF, these securities pose a money laundering risk because they are often used to generate illicit assets through market manipulation, insider trading and fraud.[642] In addition, unlawfully acquired assets can be used to purchase these securities in order to resell them and create the appearance of legitimately sourced funds.[643] We believe that securities offered and sold in reliance on Section 4(a)(6) could be susceptible to money laundering because they are low priced, are placed in an offering that is exempt from registration and not subject to the filing review process of a registered offering. In addition, we expect that many of the issuers relying on the exemption in Section 4(a)(6) may be shell companies, which have been associated with a high risk of money laundering.[644] We believe that Congress was aware of these risks, which is why, in part, it chose to require that securities offered and sold in reliance on Section 4(a)(6) be sold through a regulated intermediary.[645]

The BSA[646] and its implementing regulations establish the basic framework for AML obligations imposed on financial institutions.[647] The BSA is intended to facilitate the prevention, detection and prosecution of money laundering, terrorist financing and other financial crimes. Below, we clarify which aspects of these regulations we anticipate would be relevant to funding portals, given the limited scope of their activities.[648]

Among other things, the BSA and its implementing regulations require a ''broker or dealer in securities'' (sometimes referred to in the regulations as a ''broker-dealer'') to: (1) Establish and maintain an effective AML program (''AML Program Requirement'');[649] (2) establish and maintain a Customer Identification Program (''CIP Requirement'');[650] (3) monitor for and file reports of suspicious activity (''the SAR Requirement'');[651] and (4) comply with requests for information from the Financial Crimes Enforcement Network (''FinCEN'') (the ''Section 314(a) Requirements'').[652] For purposes of the BSA obligations, a ''broker or dealer in securities'' is defined as a ''broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to [S]ection 15(b)(11) of the Securities Exchange Act of 1934.''[653] As discussed above in Section II.D.2.a, for purposes of Chapter X of Title 31 of the Code of Federal Regulations, a funding portal is ''required to be registered'' as a broker or dealer with the Commission under the Exchange Act.

Finally, we note that while other parties involved in transactions conducted pursuant to Section 4(a)(6) through a funding portal (such as a bank acting as a qualified third party to hold investor funds) have their own BSA obligations, again, as noted above, we believe that the funding portal, like an introducing broker, is in the best position to ''know its customers,'' and to identify and monitor for suspicious and potentially illicit activity at the individual customer level.

While a funding portal would be required to comply with all of the provisions in the BSA and its implementing regulations that are applicable to broker-dealers, the Commission anticipates that, as a practical matter, a funding portal's BSA obligations would typically be limited, based on the relatively limited securities activities in which funding portals would be permitted to engage. For a typical transaction involving an individual U.S. investor, funding portal activities, for example, would not involve the maintenance of ''correspondent accounts'' with foreign financial institutions or the offer of ''private banking accounts'' that would trigger the corresponding due diligence obligations under the BSA.[654] While it is possible that a funding portal's activities could trigger other BSA obligations, we expect that the nature of a funding portal's business would typically implicate the AML Program Requirement, the CIP Requirement, the SAR Requirement and the information sharing provisions of the Section 314(a) Requirements. We, therefore, highlight these obligations below.

Brokers and funding portals, which as noted above meet the definition of

involving microcap securities fraud. *See, e.g., In the Matter of Gilford Securities, Incorporated, Ralph Worthington, IV, David S. Kaplan, and Richard W. Granahan,* Release No. 34–65450 (Sept. 30, 2011); *In the Matter of Elizabeth Pagliarini,* Release No. 34–63964 (Feb. 24, 2011).

[641] *See* Financial Action Task Force (''FATF''), *Money Laundering and Terrorist Financing in the Securities Sector* 20–21 (Oct. 2009) (''FATF Typology'') (discussing the money laundering risks associated with low priced securities, private issuers and shell companies).

[642] *Id.* As explained in the FATF Typology, illicit actors ''can either use existing shares that are already publicly traded or start a shell company for the express purpose of engaging in those illicit activities. In addition, criminal organizations also have been known to use illicit assets generated outside the securities industry to engage in market manipulation and fraud.'' *Id.*

[643] *Id.* ''Moreover, criminal organizations can also initially invest in a private company that they can then use as a front company for commingling illicit and legitimate assets. They can then take this company public through an offering in the public securities markets, thus creating what appear to be legitimate offering revenues. Alternatively, criminal organizations can acquire a publicly traded company and use it to launder illicit assets.'' *Id.* The FATF Typology further highlighted the risk of shell companies that, for example, ''can be established to accept payments from criminal organizations for non-existent services. These payments, which appear legitimate, can be deposited into depository or brokerage accounts and either wire transferred out of a jurisdiction or used to purchase securities products that are easily transferable or redeemable.'' *Id.* at 39.

[644] *See, e.g.,* Joint Release, *Guidance on Obtaining and Retaining Beneficial Ownership Information,* FIN–2010–G001 (Mar. 5, 2010) (noting that criminals, money launderers, tax evaders and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them); Financial Crimes Enforcement Network, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (Nov. 2006), *available at http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf.*

[645] 158 Cong. Rec. S1781 (daily ed. Mar. 19, 2012) (statement of Sen. Carl Levin) (''Senior citizens, state securities regulators, and others worry that this will give rise to money laundering and fraud risks.'')

[646] *See* BSA, note 562.

[647] *See* 31 CFR Chapter X.

[648] We also propose to impose on funding portals obligations that are analogous to those imposed on broker-dealers pursuant to Exchange Act Rule 17a–8 (17 CFR 240.17a–8), which requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements of the BSA's implementing regulations, as found in Chapter X of Title 31 of the CFR. These proposed obligations are discussed in Section II.D.5 below, which also addresses other recordkeeping requirements we are proposing for funding portals. *See* proposed Rule 404(f) of Regulation Crowdfunding.

[649] *See* 31 U.S.C. 5318(h). *See also* 31 CFR 1023.210; FINRA Rule 3310.

[650] 31 CFR 1023.220.

[651] 31 CFR 1023.320. *See also* FINRA Rule 3310.

[652] 31 CFR 1010.520.

[653] 31 CFR 1010.100(h). As noted above, certain FinCEN regulations apply to a ''broker-dealer,'' which is defined as a ''person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78*o*(b)(11).'' 31 CFR 1023.100(b). Such broker-dealers also would meet the definition of ''broker or dealers in securities'' above.

[654] *See* 31 CFR 1010.610 and 1010.620.

''broker,'' [655] can satisfy the AML Program Requirement by implementing and maintaining an AML program that complies with SRO rules.[656] Generally, under existing rules applicable to brokers, an AML program must be in writing and include, at a minimum: (1) Policies, procedures and internal controls reasonably designed to achieve compliance with the BSA and its implementing rules; (2) policies and procedures that can be reasonably expected to detect and cause the reporting of transactions under 31 U.S.C. 5318(g) and the implementing regulations thereunder; (3) the designation of an AML compliance officer, including notification to the SROs; (4) ongoing AML employee training; and (5) an independent test of the firm's AML program, annually for most firms.[657]

FinCEN's BSA regulations also require brokers, and thus would require funding portals, to establish a written CIP that, at a minimum, includes procedures for: (1) Obtaining customer identifying information from each customer prior to account opening; (2) verifying the identity of each customer,[658] to the extent reasonable and practicable, within a reasonable time before or after account opening; (3) making and maintaining a record of obtained information relating to identity verification; (4) determining, within a reasonable time after account opening or earlier, whether a customer appears on any list of known or suspected terrorist organizations designated by Treasury; [659] and (5) providing each customer with adequate notice, prior to opening an account, that information is being requested to verify the customer's identity.[660]

The CIP rule provides that, under certain defined circumstances, brokers, which would include funding portals, may rely on the performance of another financial institution to fulfill some or all of the requirements of the broker's CIP.[661] In order for brokers (which would include funding portals) to rely on the other financial institution, for example, the reliance must be reasonable.[662] The other financial institution also must be subject to an AML compliance program rule and be regulated by a federal functional regulator.[663] Additionally, the broker and the other financial institution must enter into a contract, and the other financial institution must certify annually to the broker that it has implemented an AML program and that it will perform the specified requirements of the broker's CIP.[664]

Under the SAR Requirement, brokers and funding portals, which as noted above meet the definition of ''broker,'' [665] must file a suspicious activity report if: (1) A transaction is conducted or attempted to be conducted by, at, or through a broker; (2) the transaction involves or aggregates funds or other assets of at least $5,000; and (3) the broker knows, suspects or has reason to suspect that the transaction: (i) Involves funds or is intended to disguise funds derived from illegal activity, (ii) is designed to evade requirements of the BSA, (iii) has no business or apparent lawful purpose, and the broker knows of no reasonable explanation for the transaction after examining the available facts, or (iv) involves the use of the broker-dealer to facilitate criminal activity.[666] The suspicious activity must be reported on a form prescribed by FinCEN, which includes instructions.[667] Brokers, which would include funding portals, must maintain a copy of any suspicious activity report filed, as well as supporting documentation for a period of five years from the date of filing the report.[668] The report (and any information that would reveal its existence) must be kept confidential.[669]

Under the Section 314(a) Requirements, brokers, which would include funding portals, also must respond to mandatory requests for information made by FinCEN on behalf of federal law enforcement agencies.[670] Law enforcement agencies with criminal investigative authority are permitted to request that FinCEN solicit, on the agency's behalf, certain information from a financial institution, including brokers; FinCEN also may make similar requests on its own behalf or on behalf of certain components of Treasury.[671] Upon receiving such a request, a broker (which would include a funding portal) is required to search its records to determine whether it has accounts for, or has engaged in transactions with, any specified individual, entity or organization.[672] If the broker identifies an account or transaction identified with any individual, entity or organization named in the request, it must report certain relevant information to FinCEN.[673] Brokers also must designate a contact person (typically the firm's AML compliance officer) to receive the requests and must maintain the confidentiality of any request and any responsive reports to FinCEN.[674]

Request for Comment

233. We identified the AML Program, CIP, SAR and 314(a) Requirements as the most significant requirements that would most typically apply to funding portals, in light of the nature of their business. Under the proposed rules, however, funding portals would be subject to all BSA requirements applicable to registered brokers. Are there any other requirements under the BSA and its implementing regulations that should be clarified, with regard to application in the crowdfunding context, or excluded from application to funding portals? If so, which ones?

234. Is express compliance with the BSA by funding portals, as proposed, necessary to protect against the risk of money laundering, given that other regulated entities involved in transactions conducted pursuant to Section 4(a)(6), such as the qualified third party we propose to require be involved in the transmission of proceeds, are subject to the BSA? Please explain.

235. Is there another approach, other than the one we have proposed, to help protect against the risk of money laundering, that does not rely on BSA compliance? If so, please explain.

c. Privacy

Section 4A(a)(9) requires intermediaries to take such steps to

[655] *See* discussion in this section above and in Section II.D.2.a above.

[656] 31 CFR 1023.210 (providing that a broker-dealer is deemed to have satisfied the requirement to establish an AML program if it (1) implements and maintains an anti-money laundering program that complies with the rules, regulations or requirements of its SRO governing such programs; and (2) the rules, regulations or requirements of the SRO have been approved, if required, by the SEC).

[657] *See, e.g.,* FINRA Rule 3310. FINRA's existing AML program rule applies to member broker-dealers. FINRA or any other national registered securities association may adopt an AML Program Requirement specific to funding portals. Consistent with the BSA, any such rule must require that the AML program include, at a minimum: the development of internal policies, procedures and controls; designation of a compliance officer, an ongoing employee training program and an independent audit function to test the program. *See* 31 U.S.C. 5318(h).

[658] For purposes of the CIP requirements, a customer is generally defined as ''a person that opens a new account.'' 31 CFR 1023.100(d).

[659] To date, there are no designated government lists to verify specifically for CIP purposes.

[660] 31 CFR 1023.220.

[661] 31 CFR 1023.220(a)(6).

[662] 31 CFR 1023.220(a)(6)(i).

[663] 31 CFR 1023.220(a)(6)(ii).

[664] 31 CFR 1023.220(a)(6)(iii).

[665] *See* discussion in this section above and in Section II.D.2.a above.

[666] 31 CFR 1023.320(a).

[667] 31 CFR 1023.320(b).

[668] 31 CFR 1023.320(d).

[669] 31 CFR 1023.320(e).

[670] 31 CFR 1010.520.

[671] 31 CFR 1010.520(b).

[672] 31 CFR 1010.520(b)(3).

[673] 31 CFR 1010.520(b)(3)(ii).

[674] 31 CFR 1010.520(b)(3)(iii) and (iv).

protect the privacy of information collected from investors as the Commission shall, by rule, determine appropriate. One commenter suggested that the responsibility for storing confidential information should rest with the intermediary and that data should not be shared with, or stored by, any other organization.[675] The commenter recommended requiring intermediaries to store information in a secure fashion on a dedicated, secure server. The commenter also urged the Commission to identify, by rule or otherwise, an appropriate industry standard for protection of this data, perhaps looking to standards adopted in the legal and banking industries as examples. Another commenter suggested that a procedure should be established to allow the public to control the delivery and the amount of emails soliciting funds for crowdfunding projects.[676]

The proposed rules would implement the requirements of Section 4A(a)(9) by subjecting funding portals, as brokers, to the same privacy rules applicable to brokers.[677] Proposed Rule 403(c), therefore, would require funding portals to comply with Regulation S–P (Privacy of Consumer Financial Information and Safeguarding Personal Information),[678] Regulation S–AM (Limitations on Affiliate Marketing)[679] and Regulation S–ID (Identity Theft Red Flags)[680] (collectively, the ''Privacy Rules'').[681]

Regulation S–P governs the treatment of nonpublic personal information by brokers, among others.[682] It generally requires a broker to provide notice to investors about its privacy policies and practices; describes the conditions under which a broker may disclose nonpublic personal information about investors to nonaffiliated third parties; and provides a method for investors to prevent a broker from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to certain exceptions. Regulation S–AM allows a consumer, in certain limited situations, to block affiliates of covered persons (*i.e.,* brokers, dealers, investment companies and both investment advisers and transfer agents registered with the Commission) from soliciting the consumer based on eligibility information (*i.e.,* certain financial information, such as information regarding the consumer's transactions or experiences with the covered person) received from the covered person.[683] Regulation S–ID generally requires brokers to develop and implement a written identity theft prevention program that is designed to detect, prevent and mitigate identity theft in connection with certain existing accounts or the opening of new accounts.[684]

While we recognize that crowdfunding activities, like any Internet-based communications, could raise novel issues not already addressed in existing regulations and guidance, we believe that it is unnecessary to repeat identical, existing requirements, in a separate rule proposal only for funding portals, or to propose rules that would apply not only to crowdfunding, but to a broader set of technology-based activity. We believe that the requirements of the Privacy Rules would impose relatively minimal costs on funding portals,[685] but provide key investor protections, and that persons who deal with funding portals, as opposed to brokers, should not have to lose the benefit of those protections.

Although one commenter suggested the development of a procedure to allow the public to control the delivery and the amount of emails that solicit funds for crowdfunding projects,[686] we note that the definition of funding portal in Exchange Act Section 3(a)(80) and the proposed rules[687] prohibit a funding portal from soliciting investors for specific crowdfunding projects. Moreover, Section 4A(b)(2) and the proposed rules[688] prohibit issuers from advertising the terms of an offering, except for directing potential investors to the intermediary.[689] The proposed rules[690] also incorporate prohibitions on the transmission of personally identifiable information in connection with intermediaries' advertisements, referrals and payments to third parties.[691] We believe that these provisions, in combination with the Privacy Rules, address the commenter's concern. Although one commenter urged us not to permit intermediaries to store information with third parties,[692] we note that our recordkeeping rules applicable to brokers permit the use of third-party service providers for storing records.[693] We are proposing a similar requirement for funding portals, as discussed in Section II.D.5 below. A different requirement for funding portals would not be consistent with the requirements for brokers and may not be economically feasible for some intermediaries.

Request for Comment

236. Is it appropriate to implement the requirements of Section 4A(a)(9) by applying the requirements of the Privacy Rules to funding portals? Why or why not? Is the nature of a funding portal's activities such that a different requirement to protect privacy would be more appropriate? Please explain.

237. Are there specific considerations with respect to privacy and crowdfunding that are not already adequately addressed in the Privacy Rules? If so, what are they and how should we address them?

238. Should we provide additional guidance concerning the application of the Privacy Rules to funding portals? If so, which parts and why?

239. Under the proposed rules, funding portals would be required to collect information about their customers in order to comply with anti-money laundering provisions, as brokers are required to do, as discussed above in relation to proposed Rule 402(b). At the same time, intermediaries would be required to take steps to protect the privacy of information collected from customers, as set forth in Section 4A(a)(9). Do our proposed rules achieve the appropriate balance between these two objectives? What other approaches would achieve an appropriate balance? Please explain.

d. Inspections and Examinations

Congress specified that funding portals must remain subject to our examination authority.[694] Under the

[675] *See* RocketHub Letter 1.

[676] *See* Bach Letter.

[677] *See* proposed Rule 403(c) of Regulation Crowdfunding.

[678] *See Privacy of Consumer Financial Information (Regulation S–P),* Release No. 34–42974 (June 22, 2000) [65 FR 40334 (June 29, 2000)].

[679] *See Regulation S–AM: Limitations on Affiliate Marketing,* Release No. 34–60423 (Aug. 4, 2011) [74 FR 40398 (Aug. 11, 2009)].

[680] *See Identity Theft Red Flags Rules,* Release No. 34–69359 (Apr. 10, 2013) [78 FR 23637 (Apr. 19, 2013)] (''*Identity Theft Red Flags Rules*'') (adopted jointly with the Commodity Futures Trading Commission).

[681] *See* 17 CFR part 248.

[682] *See* 17 CFR part 248 subpart A.

[683] 17 CFR part 248 subpart B.

[684] *See Identity Theft Red Flags Rules,* note 680.

[685] *See* discussion in Section IV.C.2.l below.

[686] *See* Bach Letter.

[687] *See* proposed Rule 300(c) of Regulation Crowdfunding.

[688] *See* proposed Rule 204 of Regulation Crowdfunding.

[689] *See* discussion in Section II.B.4 above.

[690] *See* proposed Rules 305 and 402(b)(6) of Regulation Crowdfunding.

[691] *See* discussion in Sections II.C.7 and II.D.3 above.

[692] *See* RocketHub Letter 1.

[693] *See* 17 CFR 240.17a–4(i).

[694] As a condition to exempting funding portals from the requirement to register as broker-dealers under Exchange Act Section 15(a)(1) (15 U.S.C. 78c(a)(1)), Exchange Act Section 3(h)(1)(A) requires that registered funding portals remain subject to, among other things, our examination authority. *See* proposed Rule 403(d) of Regulation Crowdfunding.

proposed rules, a funding portal would be required to permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by our representatives and by representatives of the registered national securities association of which it is a member.

Request for Comment

240. Are there any additional provisions that should be incorporated in the proposed rules regarding inspection and examination of funding portals? Please explain.

5. Records To Be Created and Maintained by Funding Portals

The proposed rules would require a funding portal to create and maintain certain records.[695] We believe that it is important for funding portals to be subject to a recordkeeping requirement in order to create a meaningful audit trail of the crowdfunding transactions and communications. Without these records, the Commission and any registered national securities association would have difficulty examining a funding portal for compliance with the requirements of Regulation Crowdfunding, the BSA [696] and the federal securities laws.

The proposed rules would require a funding portal to make and preserve certain records for five years, with the records retained in a readily accessible place for at least the first two years.[697] The records would include those regarding investors who purchase or attempt to purchase securities through the funding portal, such as information relating to educational materials provided to investors, account opening and transactions (including notices of investment commitments and reconfirmations), as required under Subpart C. They also would include records relating to issuers that offer and sell, or attempt to offer and sell, securities through the funding portal and to persons having control with respect to those issuers. This proposed requirement would better enable regulators to gather information about the activities in which the funding portal has been engaged, as well as about the issuers and investors that use the funding portal for their crowdfunding transactions.

The proposed rules also would require a funding portal to maintain records of all communications that occur on or through its platform.[698] Some commenters expressed concerns about the ability of funding portals to track and store communications that take place outside of their platforms.[699] We believe that funding portals should be responsible to keep records of only the communications that occur on or through their platforms, including in the communication channels they are required to provide. We do not believe they should be responsible for keeping records of communications that take place exclusively outside of their platforms, such as on third-party social media sites or elsewhere on the Internet. The proposed rules also would require a funding portal to keep all records related to persons that use communication services provided by a funding portal to promote an issuer's securities or to communicate with potential investors.[700] These proposed requirements would help regulators to examine the funding portal for any potential connection with promoters, including associated persons that act as promoters, whose promotion or communication activities could cause the funding portal to lose its exemption from broker-dealer registration.

The proposed rules would require a funding portal to maintain records demonstrating its compliance with requirements of Subparts C (intermediary obligations) and D (funding portal requirements).[701] This proposed requirement would require a funding portal to keep all the records it has created in the course of its business in order to comply with Regulation Crowdfunding. This requirement alone would not, however, require the creation of any records or proscribe the format or manner of any records. This proposed requirement would not only assist in regulators' compliance examinations, but also should assist funding portals in complying with the rules pertaining to their crowdfunding activities.

The proposed rules would require a funding portal to maintain all notices provided by the funding portal to issuers and investors generally through the funding portal's platform or otherwise.[702] This proposed requirement would assist regulatory examination of the funding portal for any communications to issuers or investors that could indicate violations of particular provisions of proposed Regulation Crowdfunding.

The proposed rules would require a funding portal to maintain records of all written agreements (or copies thereof) entered into by a funding portal, relating to its business as such.[703] This proposed requirement is intended to capture details of any funding portal arrangements and the funding portal's compliance with applicable requirements.

The proposed rules would require a funding portal to create and maintain daily, monthly and quarterly summaries of transactions effected through it.[704] The purpose of this proposed requirement is to help ensure that an historical and ongoing record exists of the transactions that have been conducted through the funding portal, especially given the high volume of transactions we expect to occur on funding portals' platforms.

The proposed rules would require a funding portal to make and keep a log of each offering, reflecting the progress of each issuer in meeting the target offering amount.[705] This proposed requirement is intended to support, or otherwise be compared against, information included on an issuer's filing of Form C–U.[706]

The proposed rules also would require that a funding portal make and

[695] *See* proposed Rule 404 of Regulation Crowdfunding. Exchange Act Section 3(h)(1)(C) permits us to impose, as part of our authority to exempt funding portals from broker registration, ''such other requirements under [the Exchange Act] as the Commission determines appropriate.''

[696] In the release adopting Exchange Act Rule 17a–8 (17 CFR 240.17a–8), which requires broker-dealers to comply with the reporting, recordkeeping and record retention rules adopted under the BSA, the Commission noted that the ''most effective means of enforcing compliance with the reporting and recordkeeping requirements is through on-site examinations of broker-dealer firms conducted by the Commission and the self-regulatory organizations. . . .'' *See Recordkeeping by Brokers and Dealers*, Release No. 34–18321 (Dec. 10, 1981) [46 FR 61454 (Dec. 17, 1981)].

[697] *See* proposed Rules 404(a)(1) through (9) of Regulation Crowdfunding.

[698] *See id.*

[699] *See* CFIRA Letter 13.

[700] *See* proposed Rule 404(a)(3) of Regulation Crowdfunding.

[701] *See* proposed Rule 404(a)(5) of Regulation Crowdfunding.

[702] These would include, but not be limited to: (1) Notices addressing hours of funding portal operations (if any); (2) funding portal malfunctions; (3) changes to funding portal procedures; (4) maintenance of hardware and software; (5) instructions pertaining to access to the funding portal; and (6) denials of, or limitations on, access to the funding portal. *See* proposed Rule 404(a)(6) of Regulation Crowdfunding.

[703] *See* proposed Rule 404(a)(7) of Regulation Crowdfunding.

[704] These would include: (1) Issuers for which the target offering amount has been reached and funds distributed; and (2) transaction volume, expressed in number of transactions, number of securities involved in a transaction and total amounts raised by and distributed to issuers, as well as total dollar amounts raised across all issuers, expressed in U.S. dollars. *See* proposed Rule 404(a)(8) of Regulation Crowdfunding.

[705] *See* proposed Rule 404(a)(9) of Regulation Crowdfunding.

[706] *See* discussion in Section II.B.1 above. *See also* Section II.C.5 above for a discussion of proposed Rule 303(a) of Regulation Crowdfunding.

preserve its organizational documents, during its operation as a funding portal and of any successor funding portal.[707] This proposed requirement is intended to ensure that these key documents are maintained for identification and verification purposes.

These recordkeeping requirements are similar to, but in many ways less extensive than, those for registered broker-dealers under Exchange Act Rule 17a–4(a).[708] Because funding portals would be engaged in a more limited range of activities than brokers and a relatively high proportion of funding portals would be new market entrants that may not have formal recordkeeping practices in place, the proposed requirements are relatively streamlined, compared to those for brokers. The proposed funding portal recordkeeping requirements would require only those documents that relate to the funding portal's business and would require the portal to retain them for five years, but in an easily accessible place for the first two years, for purposes of facilitating and ensuring timeliness of inspections. A funding portal would be required to produce, reproduce and maintain the required records in the original, non-alterable format in which they were created or as permitted under Exchange Act Rule 17a–4(f).[709] This flexibility should be appropriate for funding portals, because we believe that many of their documents would already be in electronic form. Thus, funding portals should not incur a significant additional burden for maintenance of those records. This flexibility also is consistent with the broker recordkeeping requirements under Exchange Act Rule 17a–4(f).

We recognize that a funding portal may find it cost-effective or otherwise appropriate to use the recordkeeping services of a third party. The proposed rules would allow third parties to prepare or maintain the required records on behalf of the funding portal, provided that there is a written agreement in place between the funding portal and the third party in which the third party states that the required records are the property of the funding portal and would be surrendered promptly on request by the Commission or the national securities association of which the funding portal is a member.[710] The funding portal also would be required to file, with the registered national securities association of which it is a member, this written undertaking, signed by a duly authorized representative of the third party. We believe that this provision would help to ensure that records maintained or preserved by a third party would be readily available for examination.

Under the proposed rules, all records of a funding portal would be subject at any time, or from time to time, to such reasonable periodic, special or other examination by our representatives and representatives of the registered national securities association of which the funding portal is a member.[711] We believe that this requirement would facilitate our oversight of funding portals and crowdfunding activities, as Congress intended.[712]

Finally, the proposed rules would require that a funding portal comply with the reporting, recordkeeping and record retention requirements of Chapter X of Title 31 of the Code of Federal Regulations, a requirement analogous to that imposed on broker-dealers under Exchange Act Rule 17a–8.[713] This requirement is intended to ensure that funding portals create and maintain an accurate record of their compliance with BSA obligations, including the requirement to maintain records of suspicious activity reports.[714] As noted above, we believe that it is important for funding portals to be subject to a recordkeeping requirement, along the same lines of the requirement applicable to brokers, to create a meaningful audit trail of the crowdfunding transactions and communications that occur on and through their platforms. Without these records, we, FINRA or any other registered national securities association, would have difficulty examining a funding portal for compliance with the requirements of Regulation Crowdfunding, the BSA[715] and the federal securities laws. Although under the proposed rules funding portals would be required to create and maintain certain records, we believe this particular rule is necessary to achieve consistent application of, and ability to examine and enforce, BSA requirements across all intermediaries, whether brokers or funding portals.

Request for Comment

241. We have proposed a variety of documents and data to be retained by a funding portal. Are these documents and data appropriate? Should other types of documents and data be required to be retained, and if so, which documents and data and why? Are any of the documents and data we propose to require be retained unnecessary, unclear or not sufficiently detailed? If so, which ones? Please explain. Should any of the proposed books and records requirements be modified? If so, please explain why.

242. What burdens or costs would the retention of such information entail? Is it appropriate to base the books and records requirements of funding portals on the books and records requirements for broker-dealers generally? Have we appropriately tailored the broker-dealer requirements for funding portals? If not, how should they be further modified? Would these tailored requirements create any competitive advantages for funding portals as compared to broker-

[707] These would include, but not be limited to: (1) Partnership agreements; (2) articles of incorporation or charter; (3) minute books; and (4) stock certificate books (or other similar type documents). *See* proposed Rule 404(b) of Regulation Crowdfunding.

[708] Exchange Act Rule 17a–4 provides more extensive details of the types of records required, and it also specifies different time periods for retention, namely three to six years, depending on the type of record. 17 CFR 240.17a–4(a).

[709] *See* proposed Rule 404(c) of Regulation Crowdfunding. Permitted formats would include the use of electronic storage media that otherwise permits the funding portal to comply with its obligations under the proposed rules. 17 CFR 240.17a–4(f).

[710] *See* proposed Rule 404(d) of Regulation Crowdfunding. An agreement between a funding portal and a third party would not relieve the funding portal from its responsibility to prepare and maintain records, as required under proposed Rule 404 of Regulation Crowdfunding. The written undertaking would be required to include the following provision: ''With respect to any books and records maintained or preserved on behalf of [name of funding portal], the undersigned hereby acknowledges that the books and records are the property of [name of funding portal], and hereby undertakes to permit examination of such books and records at any time, or from time to time, during business hours by representatives of the Securities and Exchange Commission, the national securities association of which the funding portal is a member, and to promptly furnish to the Commission and national securities association of which the funding portal is a member, a true, correct, complete and current hard copy of any, all, or any part of, such books and records.'' *See* proposed Rule 404(d) of Regulation Crowdfunding. This provision is consistent with the recordkeeping provisions applicable to brokers under Exchange Act Rules 17a–4(f) (17 CFR 17a–4(f)) and 17a–4(j) (17 CFR 240.17a–4(j)), but it is somewhat simplified to be more appropriate for funding portals.

[711] *See* proposed Rule 404(e) of Regulation Crowdfunding.

[712] *See* Exchange Act Section 3(h)(1)(A). *See also* 158 Cong. Rec. S5474–03 (daily ed. July 26, 2012) (statement of Sen. Jeff Merkley) (''I would encourage the SEC and the relevant national securities association to engage in regular reviews and reports regarding developments in the crowdfunding marketplace. . . . Should problems arise, these authorities should act quickly, including use of their full rulemaking and enforcement authorities. . . . For [crowdfunding] to succeed long-term, it will require careful oversight, especially during the early stages.'').

[713] 17 CFR 240.17a–8.

[714] We note that a funding portal's proposed obligation, under the BSA, to report suspicious activity includes an obligation to maintain the confidentiality of suspicious activity reports and any information that would reveal the existence of a suspicious activity report. *See generally* 31 CFR 1023.320.

[715] *See* note 696.

dealers engaged solely in the same limited activities in which a funding portal may engage? Are there books and records requirements currently applicable to broker-dealers, but not included in the proposed rules, that should be included? Please provide examples of any such requirements or any suggested alternatives.

E. Miscellaneous Provisions

1. Insignificant Deviations From Regulation Crowdfunding

We are proposing to provide issuers a safe harbor for certain insignificant deviations from a term, condition or requirement of Regulation Crowdfunding.[716] To qualify for the safe harbor, the issuer relying on the exemption would have to show that: (1) The failure to comply with a term, condition or requirement was insignificant with respect to the offering as a whole; (2) the issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements of Regulation Crowdfunding; and (3) the issuer did not know of the failure to comply, where the failure to comply with a term, condition or requirement was the result of the failure of the intermediary to comply with the requirements of Section 4A(a) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer's offering.

The first two prongs of the safe harbor provision are modeled after a similar provision in Rule 508 of Regulation D,[717] and we believe a similar safe harbor is appropriate for offerings made in reliance on Section 4(a)(6). The offering exemption in Section 4(a)(6) was designed to help alleviate the funding gap and the accompanying regulatory concerns faced by startups and small businesses, many of which may not be familiar with the federal securities laws. We believe that issuers should not lose the Section 4(a)(6) exemption because of a failure to comply that is not significant with respect to the offering as a whole, so long as the issuer, in good faith, attempted to comply with the rules. We also propose to include the third prong of the safe harbor because, under the statute, an issuer could lose the exemption because of the failure of the intermediary to comply with the requirements of Section 4A(a). We believe that an issuer should not lose the offering exemption due to such failure by the intermediary, which likely would be out of the issuer's control, if the issuer did not know of such failure or such failure related to offerings other than the issuer's offering. Absent this safe harbor, we believe issuers may be hesitant to participate in offerings in reliance on Section 4(a)(6) due to uncertainty regarding their ability to rely on the exemption, which could undermine the facilitation of capital raising for startups and small businesses.

We believe that the potential harm to investors that might result from the applicability of this safe harbor would be minimal because the deviations must be insignificant to the offering as a whole for the safe harbor to apply. In addition, the proposed rules would provide that notwithstanding this safe harbor, any failure to comply with Regulation Crowdfunding would nonetheless be actionable by the Commission.[718] We believe that this safe harbor would address concerns raised by one commenter and a member of Congress.[719] We also believe it appropriately would protect an issuer who made a diligent attempt to comply with the proposed rules from losing the exemption as a result of insignificant deviations from Regulation Crowdfunding.

Request for Comment

243. Is a safe harbor for certain insignificant deviations from a term, condition or requirement of Regulation Crowdfunding appropriate? If so, is the proposed safe harbor sufficiently broad or too broad? Are there additional conditions that should apply for an issuer to rely on the safe harbor? If so, what conditions and why?

244. Should we define the term ''insignificant'' or use a different term? Please explain. Should we use a standard requiring something other than ''good faith and reasonable attempt'' to comply with the requirements? If so, what standard and why? Is it appropriate for the safe harbor to cover the failure of the intermediary to comply with the requirements of Section 4A(a) if the issuer did not know of such failure or such failure occurred solely in offerings other than the issuer's offering? Why or why not?

245. Are there certain deviations that should never be considered insignificant for purposes of this safe harbor? Why or why not? Should we provide examples of deviations that we would consider significant? If so, what should those be (*e.g.,* failure to file the Form C: Offering Statement on EDGAR)?

2. Restrictions on Resales

Section 4A(e) provides that securities issued in reliance on Section 4(a)(6) may not be transferred by the purchaser for one year after the date of purchase, except when transferred: (1) To the issuer of the securities; (2) to an accredited investor; (3) as part of an offering registered with the Commission; or (4) to a family member of the purchaser or the equivalent, or in connection with certain events, including death or divorce of the purchaser, or other similar circumstances, in the discretion of the Commission. Section 4A(e) further provides that the Commission may establish additional limitations on securities issued in reliance on Section 4(a)(6).

The proposed rules track the provisions of Section 4A(e).[720] We also are proposing to include instructions in the rules to define ''accredited investor'' and a ''member of the family of the purchaser or the equivalent.'' Under the proposed rules, the term ''accredited investor'' would have the same definition as in Rule 501(a) of Regulation D.[721]

The statute does not define ''member of the family of the purchaser or the equivalent.'' We propose to define the phrase to mean a ''child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships.'' This definition tracks the definition of ''immediate family'' in Exchange Act Rule 16a–1(e),[722] but with the addition of ''spousal equivalent.'' We propose to include the term spousal equivalent to address the concept in Section 4A(e)(1)(D) of the ''equivalent'' of a member of the family of the purchaser. The proposed rules would define spousal equivalent to mean a cohabitant occupying a relationship generally equivalent to that of a spouse.[723] This is the same definition as in Rule

[716] *See* proposed Rule 502 of Regulation Crowdfunding.

[717] 17 CFR 230.508.

[718] *See* proposed Rule 502(b) of Regulation Crowdfunding.

[719] *See* 2012 SEC Government-Business Forum, note 29 (recommending that we provide a safe harbor for ''innocent violations of procedural or disclosure requirements'' in transactions relying on Section 4(a)(6)). *See also* 158 Cong. Rec. S2230 (daily ed. Mar. 29, 2012) (statement of Sen. Scott Brown) (''[I]ssuers should not be held liable for misstatements or omissions that were made by mistake'').

[720] *See* proposed Rule 501 of Regulation Crowdfunding.

[721] 17 CFR 230.501(a). *See also* note 38.

[722] 17 CFR 240.16a–1(e).

[723] *See* proposed Instruction to paragraph (c) of proposed Rule 501 of Regulation Crowdfunding.

202(a)(11)(G)–1(d)(9) under the Investment Advisers Act of 1940.[724] We believe issuers and investors would benefit from definitions that are consistent with those already used in our rules, rather than creating a new definition, because issuers may be familiar with those terms and should benefit from existing Commission and staff guidance. The proposed rules also would provide that securities offered and sold in reliance on Section 4(a)(6) may be transferred during the initial one-year period to a trust controlled by the initial purchaser or to a trust created for the benefit of a member of the family of the purchaser or the equivalent. We believe allowing transfers in such cases would be consistent with the intent of the provision because the person that controls or benefits from the trust would otherwise be covered by the rules.

Request for Comment

246. Are the proposed limitations on resale appropriate? Why or why not? If not, what approach would be more appropriate and why? Should there be additional limitations on resale, especially after the first year? Why or why not? If so, what should they be and why? If an issuer no longer was in compliance with the ongoing reporting requirements[725] or was no longer in business, should we place restrictions on the resale of the issuer's securities or otherwise limit the ability of those shares to trade? If so, please describe the appropriate restrictions and explain how we could implement such restrictions.

247. To transfer securities to an accredited investor during the one-year period beginning when the securities are sold in reliance on Section 4(a)(6), the seller would need to have a reasonable belief that the purchaser is an accredited investor.[726] Is this approach appropriate? Why or why not?

248. Is the proposed use of the definition of ''accredited investor'' in Rule 501(a) of Regulation D appropriate? Why or why not? Should a different definition be used for purposes of Regulation Crowdfunding? Please explain.

249. Is the proposed definition of ''member of the family of the purchaser or the equivalent'' appropriate? Is it appropriate to track the definition of ''immediate family'' under Exchange Act Section 16 (with the addition of ''spousal equivalent''), or would another definition be more appropriate? Should any persons be included or not included in the definition? Why or why not? Should we use a consistent definition throughout Regulation Crowdfunding even if it differs from similar rules in other Commission regulations? Why or why not?

3. Information Available to States

Under Section 4A(d), the Commission shall make available, or shall cause to be made available by the relevant intermediary, the information required under Section 4A(b) and such other information as the Commission, by rule, determines appropriate to the securities commission (or any agency or office performing like functions) of each State and territory of the United States and the District of Columbia.

One commenter suggested that all information filed with the Commission should be made available to state regulators.[727] Another commenter questioned whether open Internet access to the crowdfunding platforms would be sufficient, questioning a platform's ability to maintain or archive records from Web sites that are routinely updated.[728] Another commenter suggested that the requirement in Section 4A(d) should create an affirmative obligation for an intermediary only if a state regulator requests information in excess of what is provided to the Commission.[729]

We are proposing to require issuers to file on EDGAR the information required by Section 4A(b) and the related rules. Information filed on EDGAR is publicly available and would, therefore, be available to each state, territory and the District of Columbia. We believe this approach would satisfy the requirement to make the information available. Accordingly, we do not believe that it is necessary to propose to impose any additional obligations on intermediaries with respect to this requirement.

Request for Comment

250. Would the availability of information on EDGAR satisfy the requirement to make the information available to each state, territory and the District of Columbia? Are there other means of making the information available? Should we impose any additional obligations on intermediaries with respect to this requirement? If so, what are they? For example, should we require issuers or intermediaries to provide this information directly to state regulators? Please explain.

4. Exemption from Section 12(g)

Section 303 of the JOBS Act amended Exchange Act Section 12(g) to provide that ''the Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under [S]ection 4[(a)](6) of the Securities Act of 1933 from the provisions of this subsection.''

As amended by the JOBS Act, Section 12(g) requires, among other things, that an issuer with total assets exceeding $10,000,000 and a class of securities held of record by either 2,000 persons, or 500 persons who are not accredited investors, register such class of securities with the Commission.[730] Crowdfunding contemplates the issuance of securities to a large number of holders, which could increase the likelihood that Section 4(a)(6) issuers would exceed the thresholds for reporting in Section 12(g). Section 303 could be read to mean that securities acquired in a crowdfunding transaction would be excluded from the record holder count permanently, regardless of whether the securities continue to be held by a person who purchased in the crowdfunding transaction. An alternative reading could provide that securities acquired in a crowdfunding transaction would be excluded from the record holder count only while held by the original purchaser in the Section 4(a)(6) transaction, as a subsequent purchaser of the securities would not be considered to have ''acquired [the securities] pursuant to an offering made under [S]ection 4[(a)](6).''

Commenters expressed concern that once the securities issued pursuant to Section 4(a)(6) are transferred, the exemption from Section 12(g) registration could cease to apply and any new holders of those securities would be included in the calculation of holders of record for purposes of Section 12(g), which could potentially require an issuer to register its securities with the Commission.[731] Another

[724] 17 CFR 275.202(a)(11)(G)–1(d)(9). *See also Family Offices,* Release No. IA–3220 (Jun. 22, 2011) [76 FR 37983 (June 29, 2011)] (adopting release); *Family Offices,* Release No. IA–3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)] (proposing release).

[725] *See* Section II.B.2 above for a discussion of the ongoing reporting requirements.

[726] *See* proposed Rule 501(b) of Regulation Crowdfunding.

[727] *See* Commonwealth of Massachusetts Letter.

[728] *See* NASAA Letter.

[729] *See* RocketHub Letter 1.

[730] *See* Section 501 of the JOBS Act. In the case of an issuer that is a bank or a bank holding company, Exchange Act Section 12(g)(1)(B) (15 U.S.C. 78*l*(g)(1)(B)) requires, among other things, that the issuer, if it has total assets exceeding $10,000,000 and a class of securities held of record by 2,000 persons, register such class of securities with the Commission. *See* Section 601 of the JOBS Act.

[731] *See* Liles Letter 1; NCA Letter (stating that the time and expense associated with registration of a class of securities could affect an issuer's working capital and business operations); CFIRA Letter 2

Continued

commenter noted that the prospect that resales could trigger registration requirements under the Exchange Act might provide an incentive for issuers to attempt in some way to restrict resale and transfer of the securities issued in the offering made in reliance on Section 4(a)(6), even after the lapse of the one year transfer limitation, which would be to the detriment of small crowdfunding investors seeking liquidity.[732] One commenter suggested that the exemption from Section 12(g) registration should attach to different securities issued in a subsequent restructuring, recapitalization or similar transaction that is exempt from, or otherwise not subject to, the registration requirements of Section 5, so long as the parties to the transaction are affiliates of the original issuer.[733] The same commenter suggested that the availability of the exemption be conditioned on the issuer complying with the ongoing reporting requirements and not having total assets at the last day of the fiscal year in excess of $25 million.[734]

Proposed Rule 12g–6 provides that securities issued pursuant to an offering made under Section 4(a)(6) would be permanently exempted from the record holder count under Section 12(g). An issuer seeking to exclude a person from the record holder count would have the responsibility for demonstrating that the securities held by the person were initially issued in an offering made under Section 4(a)(6). We believe that allowing issuers to sell securities pursuant to Section 4(a)(6) without becoming Exchange Act reporting issuers is consistent with the intent of Title III.[735] In this regard, we note that Title III provides for an alternative reporting system under which issuers would be required to file annual reports with the Commission.[736] We believe this is consistent with the proposal to permanently exempt securities issued in reliance on Section 4(a)(6) from the record holder count under Section 12(g). Section 303 of the JOBS Act does not extend the exemption from Section 12(g) to different securities issued in a subsequent restructuring, recapitalization or similar transaction, so we are not proposing to exempt such securities at this time, as one commenter suggested.[737] We also are not proposing to condition the exemption on the issuer's compliance with the ongoing reporting requirements or on the issuer not having total assets in excess of a certain amount, as the same commenter suggested.[738] We believe that the size of the issuer should not affect the availability of the exemption because conditioning the exemption on the issuer not exceeding a certain amount of total assets would impose an additional burden on successful issuers that unsuccessful issuers would not face, which in turn would discourage growth. We also believe that failure to comply with the ongoing reporting requirements could be better addressed as proposed by making the issuer ineligible to use the exemption under Section 4(a)(6),[739] rather than by requiring such issuer to register a class of securities under Section 12(g).[740]

Request for Comment

251. Should the Commission permanently exempt securities issued pursuant to an offering under Section 4(a)(6) from the record holder count under Section 12(g), as proposed? Why or why not? Should the Commission exempt securities issued under Section 4(a)(6) only when held of record by the original purchaser in the Section 4(a)(6) transaction, an affiliate of the original purchaser, a member of the original purchaser's family or a trust for the benefit of the original purchaser or the original purchaser's family? Why or why not? Are there other ways to implement Section 303 that may be more appropriate? Please explain.

252. One commenter suggested[741] that the Section 4(a)(6) exemption should survive and attach to different securities issued in a subsequent restructuring, recapitalization or similar transaction that is exempt from, or otherwise not subject to, the registration requirements of Section 5, if the parties to the transaction are affiliates of the original issuer. While we are not proposing to implement this suggestion at this time, we invite commenters to discuss the advantages and disadvantages of this approach.

253. The same commenter suggested[742] that the availability of the exemption under Section 12(g)(6) should be conditioned on the issuer not having total assets, at the last day of the fiscal year with respect to which the Section 12(g) compliance determination is made (or a reasonable time before or after such date), in excess of $25 million. Should we condition the availability of the exemption under Section 12(g)(6) on the issuer not having total assets in excess of $25 million? If not $25 million, should the availability of the exemption be conditioned on total assets not exceeding some other amount (*e.g.,* $10 million, $50 million, etc.)? Should this determination be made as of the last day of the fiscal year or a different date? Please explain.

254. Should issuers that fail to comply with the ongoing reporting requirements[743] of Regulation Crowdfunding be disqualified from relying on the exemption under Section 12(g)(6), as suggested by one commenter?[744] Why or why not?

255. How would issuers be able to distinguish securities issued in a transaction exempt under Section 4(a)(6) from securities issued in other offerings? What would be the costs associated with making such a determination?

5. Scope of Statutory Liability

As noted above, Securities Act Section 4A(c) sets forth a liability provision for crowdfunding transactions under Section 4(a)(6).[745] Section 4A(c) provides that an issuer will be liable to a purchaser of its securities in a

(stating that the need for additional capital to meet registration requirements would result in an issuer either having to borrow money, thus leveraging its business, or raising additional capital through a subsequent equity offering that would dilute existing stockholders); ABA Letter 2 (stating that a Section 12(g) exemption limited to the initial purchaser of securities would undermine the utility of such an exemption and that an initial purchaser should not be able to force an issuer to register under Section 12(g) simply by reselling his or her securities).

[732] *See* Liles Letter 1.

[733] *See* ABA Letter 2.

[734] *Id.*

[735] *See* 158 Cong. Rec. S1829 (daily ed. Mar. 20, 2012) (statement of Sen. Jeff Merkley) (''It also provides a very important provision so the small investors do not count against the shareholder number that drives companies to have to become a fully public company. That is critical and interrelates with other parts of the [crowdfunding] bill before us.'').

[736] *See* Section II.B.2 above for a discussion of the requirement to file annual reports.

[737] *See* ABA Letter 2.

[738] *See id.*

[739] *See* proposed Rule 100(b)(6) of Regulation Crowdfunding.

[740] We note, however, that making the issuer ineligible to use the exemption under Section 4(a)(6) if the issuer failed to comply with the ongoing reporting requirements could have a limited impact since it only would impact an issuer that intended to rely on the Section 4(a)(6) exemption for future offers and sales. *But see* Bradford note 1 (''The need to go back to investors for future funding should constrain self-dealing, opportunistic behavior by the entrepreneur.'').

[741] *See* ABA Letter 2.

[742] *See id.*

[743] *See* proposed Rules 202 and 203(b) of Regulation Crowdfunding and Section II.B.2 above for a discussion of the ongoing reporting requirements.

[744] *See* ABA Letter 2.

[745] The anti-fraud and civil liability provisions of the Securities Act, such as Sections 12(a)(2) and 17, apply to exempted transactions, including those transactions that will be conducted in reliance on Section 4(a)(6).

transaction exempted by Section 4(a)(6) if the issuer, in the offer or sale of the securities, makes an untrue statement of a material fact or omits to state a material fact required to be stated or necessary in order to make the statements, in light of the circumstances under which they were made, not misleading, provided that the purchaser did not know of the untruth or omission, and the issuer does not sustain the burden of proof that such issuer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. Section 4A(c)(3) defines, for purposes of the liability provisions of Section 4A, an issuer as including ''any person who offers or sells the security in such offering.'' On the basis of this definition, it appears likely that intermediaries, including funding portals, would be considered issuers for purposes of this liability provision. We believe that steps intermediaries could take in exercising reasonable care in light of this liability provision would include establishing policies and procedures [746] that are reasonably designed to achieve compliance with the requirements of Regulation Crowdfunding, and that include the intermediary conducting a review of the issuer's offering documents, before posting them to the platform, to evaluate whether they contain materially false or misleading information.

Under this liability provision, an investor who purchases securities in a crowdfunding transaction may bring an action against the issuer to recover the consideration paid for the security, with interest, or damages if the person no longer holds the security. The statute further provides that actions brought under Section 4A(c) will be subject to the provisions of Securities Act Sections 12(b) and 13, as though the liability were created under Securities Act Section 12(a)(2).

6. Disqualification

Section 302(d) of the JOBS Act requires the Commission to establish disqualification provisions under which an issuer would not be eligible to offer securities pursuant to Section 4(a)(6) and an intermediary would not be eligible to effect or participate in transactions pursuant to Section 4(a)(6). Section 302(d)(2) specifies that the disqualification provisions must be ''substantially similar'' to the disqualification provisions contained in Rule 262 of Regulation A,[747] and they also must cover certain actions by state regulators enumerated in Section 302(d)(2). The disqualifying events listed in Rule 262 apply to the issuer and certain other persons associated with the issuer or the offering, including the issuer's predecessors and affiliated issuers; directors, officers and general partners of the issuer; beneficial owners of 10 percent or more of any class of the issuer's equity securities; promoters connected with the issuer; and underwriters and their directors, officers and partners. Rule 262 disqualifying events include:

- Felony and misdemeanor convictions in connection with the purchase or sale of a security or involving the making of a false filing with the Commission (the same criminal conviction standard as in Section 302(d) of the JOBS Act) within the last five years in the case of issuers and 10 years in the case of other covered persons;
- injunctions and court orders within the last five years against engaging in or continuing conduct or practices in connection with the purchase or sale of securities, or involving the making of any false filing with the Commission;
- United States Postal Service false representation orders within the last five years;
- filing, or being named as an underwriter in, a registration statement or Regulation A offering statement that is the subject of a proceeding to determine whether a stop order should be issued, or as to which a stop order was issued within the last five years; and
- for covered persons other than the issuer:
  - being subject to a Commission order:
    - revoking or suspending their registration as a broker, dealer, municipal securities dealer or investment adviser;
    - placing limitations on their activities as such;
    - barring them from association with any entity; or
    - barring them from participating in an offering of penny stock; or
  - being suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or national securities association for conduct inconsistent with just and equitable principles of trade.

The disqualifying events specifically required by Section 302(d)(2) are:

- final orders issued by state securities, banking, savings association, credit union and insurance regulators, federal banking regulators and the National Credit Union Administration that either:
  - bar a person from association with an entity regulated by the regulator issuing the order; engaging in the business of securities, insurance or banking; or engaging in savings association or credit union activities; or
  - are based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct within a 10-year period ending on the date of the filing of the offer or sale; and
- felony and misdemeanor convictions in connection with the purchase or sale of a security or involving the making of a false filing with the Commission.

One commenter urged us to apply the same standards adopted by the Commission for Rule 506 of Regulation D [748] to this exemption.[749] Another commenter stated that searching for most disqualifying events could be achieved with automated or semi-automated inquiries to databases or data services, but other disqualifying events would be difficult to identify with those types of inquiries and should be the responsibility of the issuer to address with representations and warranties.[750] One commenter stated that if a bankruptcy proceeding would be a disqualifying event, it should be limited to a bankruptcy proceeding of the issuer or the intermediary and not include a personal bankruptcy proceeding.[751] Another commenter recommended that the disqualification rules: (1) Not be so broad as to affect ''persons who may not be true bad actors—such as persons who consent to the entry of judgments which do not also include meaningful monetary or other penalties;'' (2) not apply retroactively to cover disqualifying events prior to the adoption of the final rules; and (3) apply to other types of exempt offerings

[746] With respect to intermediaries that are funding portals, see proposed Rule 403(a) of Regulation Crowdfunding and the discussion in Section II.D.4 above.

[747] 17 CFR 230.262.

[748] *See* Securities Act Rule 506(d) [17 CFR 230.506(d)]. *See also Disqualification Adopting Release,* note 101.

[749] *See* NASAA Letter (stating that an offering made pursuant to Section 4(a)(6) also should be subject to disqualification based on the prior bad acts of the funding portal and its management).

[750] *See* Applied Dynamite Letter (stating that certain disqualifying events have open-ended definitions that would make it difficult to satisfy with confidence: ''any court of competent jurisdiction'' having entered an order because there is no limit to the number of courts which may have, at some time, been competent to enter an order regarding an issuer; being ''subject to'' certain unpublished orders or injunctions such as a United States Postal Service false representation order; and the extension of disqualification events to predecessors and affiliated issuers because of the innumerable ways in which two companies might be deemed to be affiliated).

[751] *See* Landon Letter 1.

(including offerings made in reliance on Regulation A).[752]

a. Issuers and Certain Other Associated Persons

The disqualification provisions included in Section 302(d) of the JOBS Act are modeled on the disqualification provisions included in Section 926 of the Dodd-Frank Act, which required the Commission to adopt rules, ''substantially similar'' to Rule 262, that disqualify securities offerings involving certain ''felons and other 'bad actors' '' from reliance on Rule 506 of Regulation D.[753] On July 10, 2013, we adopted rules to implement Section 926 of the Dodd-Frank Act to disqualify certain securities offerings from reliance on Rule 506 of Regulation D.[754] The proposed disqualification rules,[755] as they relate to issuers and certain other associated persons, are modeled on the Rule 506 disqualification rules, which, in turn, are substantially similar to the disqualification provisions in Rule 262.

i. Covered Persons

The proposed rules would apply the disqualification provisions to:

- the issuer and any predecessor of the issuer or affiliated issuer;
- any director, officer, general partner or managing member of the issuer;
- any 20 percent Beneficial Owner;
- any promoter connected with the issuer in any capacity at the time of the sale;
- any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with sales of securities in the offering (which we refer to as a ''compensated solicitor''); and
- any director, officer, general partner or managing member of any such compensated solicitor.

These covered persons are substantially similar to those currently covered by the disqualification rules for Rules 262 and 506. The proposed rules would cover any ''officer'' [756] of the issuer, mirroring the coverage in Rule 262, rather than any ''executive officer [and] other officer participating in the offering'' [757] as it is currently covered in Rule 506. In adopting the Rule 506 disqualification rules, we noted that an ''officer'' test would be unduly burdensome and overly restrictive due to the larger and more complex organizations that are involved in many Rule 506 transactions as compared to the smaller entities that use Regulation A. We also noted that limiting the coverage of the Rule 506 disqualification rules to executive officers and officers who participate in the offering would lessen the potential compliance burden by limiting the number of covered persons. In contrast, we believe that the startups and small businesses that may seek to raise capital in reliance on Section 4(a)(6) generally will be smaller than the entities involved in Rule 506 transactions and, likely, smaller than the issuers of securities relying on Regulation A.[758] We also believe that the ''officers'' of many issuers relying on Section 4(a)(6) may be only a few individuals, with or without formal titles. As a result, we do not believe that an ''officer'' test would be more burdensome than the test used for Regulation A purposes, so we do not see a need to deviate from Rule 262 in this context.

The proposed rules also would cover persons who are 20 Percent Beneficial Owners. This threshold differs from the 10 percent threshold specified in Rule 262, but it is the same as the threshold in the Rule 506 disqualification rules. We believe that a 10 percent ownership threshold could impose an undue burden on participants in the Section 4(a)(6) marketplace. In this regard, the potential administrative complexity of monitoring the fluctuating ownership levels and the issuer's inability to control the actions of a shareholder who does not disclose disqualification would be greater under a 10 percent threshold scheme than under a 20 percent threshold scheme. This is the same concern that led us to change the 10 percent threshold in the Rule 506 disqualification rules. A 20 percent threshold would provide greater certainty and ease of compliance than a 10 percent threshold, and it also would be consistent with both the threshold specified in the Rule 506 disqualification rules and the disclosure requirements of Sections 4A(b)(1)(B) and 4A(b)(1)(H)(iii), which require certain disclosures about shareholders based on a 20 percent threshold.[759]

The proposed rules would include the category of compensated solicitor and any director, officer, general partner or managing member of any such compensated solicitor, currently in the Rule 506 disqualification rules.[760] Regulation A offerings may involve traditional underwritten offerings, but offers and sales made in reliance on Section 4(a)(6), similar to transactions under Rule 506, would not involve underwriters. Thus, the proposed disqualification rules would not apply to underwriters, but would substitute underwriters with the concept of compensated solicitor. The statute and the proposed rules would permit issuers offering and selling securities in reliance on Section 4(a)(6) to compensate persons to promote the issuer's offering through communication channels provided by the intermediary, subject to certain conditions.[761] We believe those individuals receiving compensation to promote the issuer's offering should be covered by the disqualification provisions because they would be subject to conflicts of interest in transactions pursuant to Section 4(a)(6), which would be substantially similar to those of underwriters in Regulation A transactions.[762]

Moreover, the proposed rules would provide that events relating to certain affiliated issuers are not disqualifying if they pre-date the affiliate relationship.[763] Rule 262(a)(5) currently provides that orders, judgments and decrees entered against affiliated issuers before the affiliation arose do not disqualify an issuer from reliance on Regulation A if the affiliated issuer is not: (1) In control of the issuer; or (2) under the common control of a third party that controlled the affiliated issuer at the time such order, judgment or decree was entered. The proposed rules would include a substantially similar provision but would clarify that it applies to all potentially disqualifying events that pre-date affiliation. We believe this is appropriate because the

[752] *See* SEC Government-Business Forum, note 29.

[753] *See* Dodd-Frank Act, note 38.

[754] *See Disqualification Adopting Release,* note 101.

[755] *See* proposed Rules 503(a)–(c) of Regulation Crowdfunding.

[756] Under Securities Act Rule 405, the term ''officer'' is defined as ''a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization.'' 17 CFR 230.405.

[757] Under Securities Act Rule 405, the term ''executive officer'' is defined as a ''president [of the registrant], any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant.'' 17 CFR 230.405.

[758] There is no cap on the amount of proceeds that may be raised in an offering relying on Rule 506, and Regulation A limits offerings to $5 million.

[759] *See* discussion in Section II.B.1.a.i(a) above.

[760] *See* proposed Rule 503(a) of Regulation Crowdfunding.

[761] *See* Section 4A(b)(3) and proposed Rule 205 of Regulation Crowdfunding. *See also* Section II.B.5 above.

[762] We note that the receipt of transaction-based compensation in connection with the offer and sale of a security could cause a person to be a broker required to register with us under Exchange Act Section 15(a)(1) (15 U.S.C. 78c(a)(1)).

[763] *See* proposed Rule 503(c) of Regulation Crowdfunding.

current placement of this language within paragraph (5) of Rule 262(a) may incorrectly suggest that it applies only to Postal Service false representation orders. This is the same approach we took in the Rule 506 disqualification rules. As in Rule 506(d), the proposed rules would not treat entities differently if they have undergone a change of control or other remedial measures.[764] This should avoid undue complexity in applying the proposed rules, while also avoiding potential abuse by bad actors that may falsely claim to have undergone a change of control.[765]

Request for Comment

256. Should we eliminate or modify any of the proposed categories of covered persons? If so, which ones and why? Would doing so still result in a rule substantially similar to Rule 262? Should we disqualify additional categories of covered persons? If so, which ones and why?

257. The proposed rules would apply to officers of the issuer, mirroring Rule 262, rather than executive officers and other officers participating in the offering, as in Securities Act Rule 506(d). Is this approach appropriate? Why or why not?

258. Should persons compensated to promote the issuer's offering through communication channels provided by the intermediary be covered persons, as is the case for the Rule 506 disqualification rules? Why or why not? Would doing so result in a rule substantially similar to Rule 262?

259. The proposed disqualification rules would cover persons who are 20 Percent Beneficial Owners. Is the 20 percent beneficial ownership threshold appropriate? Why or why not? Should the proposed disqualification rules cover persons based on a 10 percent ownership threshold, as in Rule 262? Why or why not?

260. Should orders, judgments and decrees entered against affiliated issuers not be disqualifying if they pre-date the affiliate relationship, as proposed? Should we, as proposed, expand this treatment to entities that have undergone a change of control or a change of policy? Why or why not?

ii. Disqualifying Events

(a) Criminal Convictions

Section 302(d)(2)(B)(ii) provides for disqualification if any covered person ''has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.'' This essentially mirrors Rule 262(a)(3), which covers criminal convictions of issuers, and Rule 262(b)(1), which covers criminal convictions of other covered persons. There are, however, two differences between the felony and misdemeanor conviction provisions of Section 302(d)(2)(B)(ii) and Rule 262. First, Section 302(d)(2)(B)(ii) does not include a specific time limit (or ''look-back period'') on convictions that trigger disqualification, while Rule 262 provides a five-year look-back period for criminal convictions of issuers and a 10-year look-back period for criminal convictions of other covered persons. In light of the time limits on criminal convictions under Rule 262, we are proposing the same five-year and 10-year look-back periods so the proposed rules would be substantially similar to the existing rules. Second, unlike Rule 262(b)(1), Section 302(d) does not include a reference to criminal convictions ''arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser.'' We are not aware of any legislative history that explains why this type of conviction was not mentioned in Section 302(d). However, because such convictions are covered in Rule 262, we believe that rules substantially similar to the existing rules should cover them.

The proposed rules are based on Rule 262 and differ from the Rule 506 disqualification rules in that the look-back period would be measured from the date of the requisite filing with the Commission, rather than the date of the relevant sale.[766] We noted in the proposing release for the Rule 506 disqualification rules[767] that measuring from the date of the requisite filing, as in Rule 262, would not be appropriate in the context of Rule 506 because no filing is required to be made with the Commission before an offer or sale is made in reliance on Regulation D.[768] Because the proposed rules would require issuers offering securities in reliance on Section 4(a)(6) to file with the Commission the information required by Section 4A(b),[769] the proposed rules would measure the look-back period based on the filing date, similar to Rule 262, rather than the date of sale.

(b) Court Injunctions and Restraining Orders

Under Rule 262(a)(4), an issuer is disqualified from reliance on Regulation A if it, or any predecessor or affiliated issuer, is subject to a court injunction or restraining order against ''engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.'' Similarly, under Rule 262(b)(2), an issuer is disqualified from reliance on Regulation A if any other covered person is subject to such a court injunction or restraining order or to one ''arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer or investment adviser.'' Disqualification is triggered by temporary or preliminary injunctions and restraining orders that are currently in effect, as well as by permanent injunctions and restraining orders entered within the last five years.[770]

The proposed rules are substantially similar to these two provisions, but in a simplified, combined format.[771] The proposed rules would include the same coverage and look-back periods that apply under the disqualification provisions for Rules 262 and 506, except that the look-back period would be measured from the date of the requisite filing with the Commission, consistent with the approach in Rule 262. The proposed rules also would not impose due process requirements (such as notice and an opportunity to appear) or require that all appeals be exhausted or

[764] *See Disqualification Adopting Release,* note 101 (declining to provide different treatment for entities that have undergone a change of control or other remedial measures, such as a change of policy whereby an issuer would have implemented policies and procedures, designed to prevent the occurrence of the kinds of activities that gave rise to disqualification, and such policies and procedures would have been approved by a regulator or a court).

[765] Entities that have undergone a change of control or a change of policy could, however, seek a waiver of the disqualification upon a proper showing that there has been a change of control and the persons responsible for the activities resulting in a disqualification are no longer employed by the entity or exercise influence over such entity. *See* Section II.E.6.a.iv below for a discussion of waivers.

[766] *See* proposed Rule 503(a)(1) of Regulation Crowdfunding.

[767] *See Disqualification of Felons and Other ''Bad Actors'' from Rule 506 Offerings,* Release No. 33–9211 (proposed May 25, 2011) at 18 [76 FR 31518, 31523 (June 1, 2011)].

[768] *See also Disqualification Adopting Release,* note 101.

[769] *See* Sections II.B.1 and II.B.3 above for a discussion of the disclosure and filing requirements.

[770] The look-back period means that disqualification no longer arises from a permanent injunction or restraining order after the requisite amount of time has passed, even though the injunction or order may still be in effect. In addition, because disqualification is triggered only when a person ''is subject to'' a relevant injunction or order, injunctions and orders that have expired or are otherwise no longer in effect are not disqualifying, even if they were issued within the relevant look-back period.

[771] *See* proposed Rule 503(a)(2) of Regulation Crowdfunding.

the time for appeal be expired, as a condition to disqualification. This is the same approach as under the disqualification provisions for Rules 262 and 506. We believe that the risk that disqualification may arise from ex parte proceedings could be better addressed through the waiver process,[772] rather than through additional requirements for factual inquiry that would affect all offerings. As for appealable orders, we believe that suspending disqualification during the pendency of a potentially lengthy appeals process could significantly undermine the intended protections in the rules, and therefore, the proposed rules would disqualify covered persons during the pendency of the appeals.

With regard to who would be viewed as subject to an order, we believe the proposed rules should be applied consistently with the way the staff has applied Rule 262. For disqualification purposes, the staff has interpreted Rule 262 to limit those considered ''subject to'' an order to only the persons specifically named in the order. Others who are not specifically named but who come within the scope of an order (such as, for example, agents, attorneys and persons acting in concert with the named person) would not be treated as ''subject to'' the order for purposes of disqualification.

(c) Final Orders of Certain Regulators

Section 302(d)(2)(B) provides that the disqualification rules for transactions made in reliance on Section 4(a)(6) must disqualify any covered person that:

(i) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(I) bars the person from—

(aa) association with an entity regulated by such commission, authority, agency, or officer;

(bb) engaging in the business of securities, insurance, or banking; or

(cc) engaging in savings association or credit union activities; or

(II) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of filing of the offer or sale.

Section 302(d)(2)(B) is substantively identical to Exchange Act Section 15(b)(4)(H) and Section 203(e)(9) of the Investment Advisers Act of 1940 (''Advisers Act''). Section 302(d)(2)(B) contains a 10-year look-back period for final orders based on violations of laws and regulations that prohibit fraudulent, manipulative and deceptive conduct, while the Exchange Act and Advisers Act provisions have no time limit for such orders.

The proposed rules would reflect the text of Section 302(d)(2)(B) with two clarifications.[773] First, the proposed rules would specify that an order must bar the covered person ''at the time of the filing of the information required by Section 4A(b) of the Securities Act of 1933,'' to clarify that a bar would be disqualifying only for as long as it has continuing effect. Second, the proposed rules would require that orders must have been ''entered'' within the look-back period, to clarify that the date of the order, and not the date of the underlying conduct, was relevant for that determination. We believe these clarifications would eliminate potential ambiguities and allow for more appropriate application of the rules. These clarifications also are consistent with the approach in the Rule 506 disqualification rules, except that under Securities Act Rule 506(d), the order must bar the covered person at the time of the relevant sale, rather than at the time of the filing, because no filing is required to be made with the Commission prior to the time of a sale made pursuant to Rule 506.

The proposed rules also would include the U.S. Commodity Futures Trading Commission (''CFTC'') in the list of regulators whose regulatory bars and other final orders will trigger disqualification. This is consistent with the approach in the Rule 506 disqualification rules. As we noted in the adopting release for Securities Act Rule 506(d),[774] the conduct that would typically give rise to CFTC sanctions is similar to the type of conduct that would result in disqualification if it were the subject of sanctions by another financial regulator. For that reason, CFTC orders trigger consequences under other Commission statutes[775] (for example, both registered broker-dealers and investment advisers may be subject to Commission disciplinary action based on violations of the Commodity Exchange Act[776]). We believe that including CFTC orders would make the disqualification rules for transactions made in reliance on Section 4(a)(6) more internally consistent, treating relevant sanctions similarly for disqualification purposes, which should enhance the effectiveness of the disqualification rules to screen out felons and bad actors.

In our view, bars are orders issued by one of the specified regulators that have the effect of barring a person from: (1) Associating with certain regulated entities; (2) engaging in the business of securities, insurance or banking; or (3) engaging in savings association or credit union activities. We believe that any such order that has one of those effects would be a bar, regardless of whether it uses the term ''bar.''[777] Under the proposed rules, a disqualifying order is one that bars the person ''at the time of the filing of the information required by Section 4A(b) of the Securities Act of 1933'' from one or more of the specified activities. Thus, for example, a person who was barred permanently, with the right to apply to reassociate after three years, would be disqualified until such time as he or she successfully applied to reassociate, assuming that the bar had no continuing effect after reassociation. Bars would be disqualifying for as long as they are in effect but no longer, matching the period of disqualification to the duration of the regulatory sanction. The treatment of regulatory bars and orders[778] is different in one relevant respect from court injunctions and restraining orders.[779] Court injunctions and restraining orders would be subject to a five-year look-back period, which would function as a cut-off (*i.e.,* injunctions and restraining orders issued more than five years before the filing required by Section 4A(b) would no longer be disqualifying, even if they are still in effect or permanent). This is the same approach as under the Rules 262 and 506 disqualification rules, and we do not believe that the shift from Regulation A and Rule 506 offerings to offerings pursuant to Section 4(a)(6) justifies extending the time period for disqualifications associated with court injunctions and restraining orders.

The proposed rules would define a ''final order'' as ''a written directive or declaratory statement issued by a

[772] *See* Section II.E.6.a.iv below for a discussion of the waiver process.

[773] *See* proposed Rule 503(a)(3) of Regulation Crowdfunding.

[774] *Disqualification Adopting Release,* note 101.

[775] *See, e.g.,* Exchange Act Section 15(b)(4)(D) [15 U.S.C. 78*o*(b)(4)(D)] and Advisers Act Section 203(e)(5) [15 U.S.C. 80b–3(e)(5)].

[776] 7 U.S.C. 1 *et seq.*

[777] Orders that do not have any of those effects are not bars, although they may be disqualifying ''final orders.''

[778] *See* proposed Rule 503(a)(3) of Regulation Crowdfunding.

[779] *See* proposed Rule 503(a)(2) of Regulation Crowdfunding.

federal or state agency, described in proposed Rule 503(a)(3) of Regulation Crowdfunding, under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.'' [780] This definition is based on the definition that FINRA uses in forms related to Exchange Act Section 15(b)(4)(H), which is identical to provisions of Section 302(d). Section 302(d) provides that disqualification must result from final orders of the relevant regulators that are ''based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.'' The proposed rules would not, similar to the Rule 506 disqualification rules, limit ''fraudulent, manipulative or deceptive conduct'' to matters involving scienter. Scienter is not a requirement under Exchange Act Section 15(b)(4)(H) or Advisers Act Section 203(e)(9). Commission orders are issued under these sections based only on the existence of a relevant state or federal regulatory order. The Commission has stated that, while the degree of scienter involved is a factor in determining what sanction is appropriate,[781] the Commission can order sanctions even where scienter is not an element of the underlying state antifraud law violation.[782] We do not believe it would be appropriate to limit the provision to matters involving scienter absent a clear statutory directive to do so, particularly when the relevant language has been construed in other contexts not to be so limited. Moreover, imposing such a limitation may result in excluding regulatory orders that are explicitly mandated to be covered by the new rules.

(d) Commission Disciplinary Orders

Rule 262(b)(3) of Regulation A disqualifies an issuer if any covered person is subject to a Commission order ''entered pursuant to [S]ection 15(b), 15B(a), or 15B(c) of the Exchange Act, or [S]ection 203(e) or (f) of the Investment Advisers Act.'' Under these provisions (other than Section 15B(a), discussed below), the Commission has authority to order a variety of sanctions against registered brokers, dealers, municipal securities dealers and investment advisers and their associated persons, including suspension or revocation of registration, censure, limiting their activities, imposing civil money penalties and barring individuals from being associated with specified entities and from participating in the offering of any penny stock.

The proposed rules are based on Rule 262(b)(3) but would not include the reference to Section 15B(a) (the basic registration requirements for municipal securities dealers).[783] Section 15B(a) is not generally a source of sanctioning authority, and we do not believe it is appropriate to refer to it in the context of the proposed disqualification rules. This is consistent with the approach in the Rule 506 disqualification rules. Under the proposed rules, the disqualification would continue only for as long as some act is prohibited or required to be performed pursuant to the order (with the consequence that censures and orders to pay civil money penalties, assuming the penalties are paid in accordance with the order, would not be disqualifying, and a disqualification based on a suspension or limitation of activities would expire when the suspension or limitation expires).

(e) Certain Commission Cease-and-Desist Orders

Section 302(d) mandates that disqualification result from final orders issued within a 10-year period by the state and federal regulators identified in Section 302(d)(2)(B)(i). These regulators include state authorities that supervise banks, savings associations or credit unions; state insurance regulators; appropriate federal banking agencies; and the National Credit Union Administration. The Commission is not included in the list of regulators, and orders issued in stand-alone Commission cease-and-desist proceedings [784] are not disqualifying under Rule 262.[785] The reason for this omission appears to be largely historical: the Commission did not have authority to bring cease-and-desist proceedings when Rule 262 was originally adopted, and the rule has not been amended to take that authority into account. We believe that adding certain Commission cease-and-desist orders to the disqualification provisions would further enhance the investor protection intent of the disqualification provisions. This approach also would be consistent with the disqualification provisions for Rule 506. We believe an injunctive or restraining order issued by a federal court and a Commission cease-and-desist order arising out of the same legal violation demonstrate equally disqualifying conduct and should have the same consequences under our proposed disqualification rules. We believe that the determination of disqualification should not depend on whether a particular enforcement action is brought in court or through a Commission cease-and-desist proceeding. Commission cease-and-desist orders would be an additional disqualification trigger not provided for in Section 302(d). In our view, Section 302(d) does not limit the existing authority we previously used to create other bad actor provisions, and based on the foregoing reasons, we believe it would be appropriate to add Commission cease-and-desist orders to the disqualification triggers.

The proposed rules, consistent with the approach for the Rule 506 disqualification rules, would not include administrative cease-and-desist orders that do not require any showing or finding of scienter, with one exception.[786] The proposed disqualification trigger only would cover Commission orders to cease and desist from violations and future violations of the scienter-based anti-fraud provisions of the federal securities laws (including, without limitation, Securities Act Section 17(a)(1),[787] Exchange Act Section 10(b) [788] and Rule 10b–5 thereunder,[789] Exchange Act Section 15(c)(1) [790] and Advisers Act Section 206(1) [791]). The only additional disqualification trigger not requiring scienter would be Section 5

[780] The federal or state agencies described in proposed Rule 503(a)(3) of Regulation Crowdfunding are the ones identified in Section 302(d)(2)(B)(i), with the addition of the CFTC.

[781] *Steadman* v. *SEC,* 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds,* 450 U.S. 91 (1981).

[782] *See In the Matter of Mitchell M. Maynard and Dorice A. Maynard,* Release No. IA–2875 (May 15, 2009).

[783] *See* proposed Rule 503(a)(4) of Regulation Crowdfunding.

[784] In cease-and-desist proceedings, the Commission can issue orders against ''any person,'' including entities and individuals outside the securities industry, imposing sanctions such as penalties, accounting and disgorgement or officer and director bars. In contrast, administrative proceedings generally are limited to regulated entities and their associated persons.

[785] The disqualification provisions under Rule 262 also do not cover other types of Commission actions. For example, the Commission has authority under Section 9(b) of the Investment Company Act to bring proceedings against ''any person'' and may impose investment company bars, civil penalties and disgorgement under Sections 9(d) and (e) of the Investment Company Act. 15 U.S.C. 80a–9(b), (d) and (e). The Commission also has authority under Rule 102(e) of its Rules of Practice to censure persons (such as accountants and attorneys) who appear or practice before it, or to deny them the privilege of appearing before the Commission temporarily or permanently. 17 CFR 201.102(e). Orders under these sections are not disqualifying under Rule 262.

[786] *See* proposed Rule 503(a)(5) of Regulation Crowdfunding.

[787] 15 U.S.C. 77q(a)(1).

[788] 15 U.S.C. 78j(b).

[789] 17 CFR 240.10b–5.

[790] 15 U.S.C. 78*o*(c)(1).

[791] 15 U.S.C. 80b–6(1).

violations.[792] Section 5 imposes a strict liability standard, which does not require a finding of scienter.[793] As a matter of policy, we do not believe that the exemption from registration under Section 4(a)(6) should be made available to persons whose prior conduct has resulted in an order to cease and desist from violations of the registration requirements of Section 5.

A disqualification based on a Commission cease-and-desist order would be subject to the same five-year look-back period that applies to court restraining orders and injunctions, rather than the 10-year look-back that is mandated to apply to other final regulatory orders under Section 302(d), which would provide consistent Commission treatment of cease-and-desist orders with court orders that we seek. This approach is also consistent with the Rule 506 disqualification rules.

(f) Suspension or Expulsion From SRO Membership or Association With an SRO Member

Rule 262(b)(4) disqualifies an offering if any covered person is suspended or expelled from membership in, or suspended or barred from association with a member of, a self-regulatory organization or ''SRO'' (*e.g.*, a registered national securities exchange or national securities association) for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.[794]

The proposed rules would include a reference to a registered affiliated securities association [795] and would apply the standard to all covered persons,[796] but they would not otherwise change the substance of Rule 262(b)(4).[797] Including these changes is the same approach as in the Rule 506 disqualification rules.

(g) Stop Orders and Orders Suspending the Regulation A Exemption

Paragraphs (a)(1) and (2) of Rule 262 disqualify an offering if the issuer, or any predecessor or affiliated issuer, has filed a registration statement or Regulation A offering statement that was the subject of a Commission refusal order, stop order or order suspending the Regulation A exemption within the last five years, or is the subject of a pending proceeding to determine whether such an order should be issued.[798] Similarly, paragraphs (c)(1) and (2) of Rule 262 disqualify an offering if any underwriter of the securities proposed to be issued was, or was named as, an underwriter of securities under a registration statement or Regulation A offering statement that was the subject of a Commission refusal order, stop order or order suspending the Regulation A exemption within the last five years, or is the subject of a pending proceeding to determine whether such an order should be issued.[799]

The proposed rules would incorporate the substance of paragraphs (a)(1), (a)(2), (c)(1) and (c)(2) of Rule 262 in a single paragraph that applies to all covered persons,[800] resulting in rules that are substantially similar to Rule 262. This is the same as the approach in the Rule 506 disqualification rules.

(h) United States Postal Service False Representation Orders

Paragraphs (a)(5) and (b)(5) of Rule 262 disqualify an offering if the issuer or another covered person is subject to a United States Postal Service false representation order, entered within the preceding five years, or to a temporary restraining order or preliminary injunction with respect to conduct alleged to have violated the false representation statute that applies to U.S. mail.[801]

The proposed rules would incorporate the substance of paragraphs (a)(5) and (b)(5) of Rule 262 in a single paragraph,[802] resulting in rules that are substantially similar to Rule 262. This is the same as the approach in the Rule 506 disqualification rules.

Request for Comment

261. Should we eliminate or modify any of the proposed disqualification events? If so, which ones and why? Should additional events be disqualifying events? If so, what should constitute a disqualifying event and why?

262. The proposed disqualification for certain criminal convictions contemplates a look-back period of five years for criminal convictions of issuers (including predecessors and affiliated issuers) and 10 years for other covered persons. Should we modify the proposed five- and 10-year look-back periods? If so, what should the look-back periods be? Should the look-back periods be measured from the date of the requisite filing with the Commission, as proposed, or the date of the relevant sale? Why?

263. Should we expand or narrow the scope of the coverage of criminal convictions? Why or why not?

264. Is the proposed coverage and look-back period for disqualification events relating to court injunctions and restraining orders appropriate? Why or why not? Should we impose any due process requirements as a condition to disqualification? If so, what should those requirements be and why? Should we expand or narrow our proposed approach of who would be viewed as subject to an order? Why or why not?

265. Are the proposed disqualification provisions relating to final orders of certain regulators appropriate? Why or why not? The proposed rules would add the CFTC to the list of regulators whose regulatory bars and other final orders will trigger disqualification. Is this addition appropriate? Why or why not? Should we define or provide additional guidance about what constitutes a ''bar''? Why or why not? Is our proposed definition of ''final order'' appropriate? If not, why not and what should it be? Should we limit ''fraudulent, manipulative or deceptive conduct'' to matters involving scienter? Why or why not?

266. Are the proposed disqualification provisions relating to Commission disciplinary orders appropriate? Why or why not? Should the disqualification continue only for as long as some act is prohibited or required to be performed pursuant to the order, as proposed, or should we impose a look-back period for Commission disciplinary orders? If we should impose a look-back period, how long should that look-back period be (*e.g.* five years, 10 years)?

267. The proposed disqualification provisions would make certain Commission cease-and-desist orders a

[792] 15 U.S.C. 77e.

[793] *See SEC* v. *Ross*, 504 F.3d 1130, 1137 (9th Cir. 2007); *Swenson* v. *Engelstad*, 626 F.2d 421, 424 (5th Cir. 1980); *SEC* v. *N. Am. Research and Dev. Corp.*, 424 F.2d 63, 81–82 (2d Cir. 1970); *SEC* v. *Pearson*, 426 F.2d 1339, 1343 (10th Cir. 1970).

[794] *See* 17 CFR 230.262(b)(4).

[795] An association of brokers and dealers may be registered as an affiliated securities association under Exchange Act Section 15A. 15 U.S.C. 78*o*–3.

[796] Rule 262(b)(4) does not apply to issuers, their predecessors or affiliated issuers. 17 CFR 230.262(b)(4).

[797] *See* proposed Rule 503(a)(6) of Regulation Crowdfunding.

[798] 17 CFR 230.262(a)(1) and (2).

[799] 17 CFR 230.262(c)(1) and (2).

[800] *See* proposed Rule 503(a)(7) of Regulation Crowdfunding.

[801] Paragraph (a)(5) of Rule 262 relates to issuers and their predecessors and affiliated issuers, and paragraph (b)(5) of Rule 262 relates to other covered persons. Disqualification results if any covered person ''is subject to a United States Postal Service false representation order entered under 39 U.S.C. 3005, within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. 3007 with respect to conduct alleged to have violated 39 U.S.C. 3005.'' [17 CFR 230.262(a)(5) and (b)(5)].

[802] *See* proposed Rule 503(a)(8) of Regulation Crowdfunding.

disqualifying event. Is this approach appropriate? Why or why not? Should we create a new disqualification trigger for orders of any other regulator not identified in Section 302(d)? If so, which regulator and why?

268. Are the proposed disqualification provisions relating to suspension or expulsion from SRO membership or association with an SRO member appropriate? Why or why not?

269. Are the proposed disqualification provisions relating to stop orders and orders suspending the Regulation A exemption appropriate? Why or why not?

270. Are the proposed disqualification provisions relating to United States Postal Service false representation orders appropriate? Why or why not?

iii. Reasonable Care Exception

The proposed rules would include an exception from disqualification for offerings in which the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed because of the presence or participation of another covered person.[803] This is the same as the approach in the Rule 506 disqualification rules. The proposed reasonable care exception should help address the potential difficulty for issuers in establishing whether any covered persons are the subject of disqualifying events,[804] particularly given that there is no central repository that aggregates information from all the federal and state courts and regulatory authorities that would be relevant in determining whether covered persons have a disqualifying event in their past. We are proposing a reasonable care exception out of concern that the benefits of the new exemption under Section 4(a)(6)—which, among other things, is intended to alleviate the funding gap and accompanying regulatory concerns faced by startups and small businesses in connection with raising capital in relatively low dollar amounts—may otherwise be substantially reduced. Issuers may be reluctant to offer or sell securities in reliance on an exemptive rule if the exemption could later be found, despite the issuer's exercise of reasonable care, not to have been available. On the other hand, issuers must have a responsibility to screen bad actors out of their offerings made in reliance on Section 4(a)(6). We believe that providing a reasonable care exception would help to preserve the intended benefits of the Section 4(a)(6) exemption and avoid creating an undue burden on capital-raising activities, while giving effect to the disqualification provisions. Although Rule 262 does not contain a reasonable care exception, we believe that even with its inclusion, the proposed rules would be substantially similar to Rule 262.

We are proposing that in order for an issuer to establish that it had exercised reasonable care, it would need to make a factual inquiry into whether any disqualifications existed. The nature and scope of the factual inquiry would vary based on the circumstances of the issuer and the other offering participants. For example, we believe that issuers should have an in-depth knowledge of their own officers and directors, which could be gained through the recruiting process and in the course of performing their duties. When relevant inquiry has already been made, further steps may not be required in connection with a particular offering. In the absence of other factors, factual inquiry by means of questionnaires or certifications, perhaps accompanied by contractual representations, covenants and undertakings, may be sufficient. If the circumstances give an issuer reason to question the veracity or accuracy of the responses to its inquiries, we believe reasonable care would require the issuer to take further steps or undertake additional inquiry to provide a reasonable level of assurance that no disqualifications apply.

The timeframe for inquiry also should be reasonable in relation to the circumstances of the offering and the participants. The objective would be for the issuer to gather information that is complete and accurate as of the time of the relevant transactions without imposing an unreasonable burden on the issuer or the other offering participants. With that in mind, we would expect issuers to determine the appropriate cut-off dates to apply when they make a factual inquiry, based upon the particular facts and circumstances of the offering and the participants involved, to determine whether any covered persons are subject to disqualification before seeking to rely on the exemption.

Request for Comment

271. Is it appropriate to have a reasonable care exception from disqualification? Why or why not?

272. In order for an issuer to establish that it had exercised reasonable care, the proposed rules would require the issuer to make a factual inquiry into whether any disqualifications existed. Is this approach appropriate? Why or why not? Should we include in the proposed rules additional guidance on what types of factual inquiries should be undertaken under the reasonable care standard? If so, what should that guidance include? Should we create a cut-off date to apply when issuers make a factual inquiry? If so, what should that cut-off date be?

iv. Waivers

The proposed rules would include a waiver provision based on Rule 262 under which the Commission could grant a waiver of disqualification if it determined that the issuer had shown good cause ''that it is not necessary under the circumstances that the [registration] exemption . . . be denied.'' Depending on the specific facts, we believe a number of circumstances (such as a change of control, change of supervisory personnel, absence of notice and opportunity for hearing and relief from a permanent bar for a person who does not intend to apply to reassociate with a regulated entity) could be relevant to the evaluation of a waiver request. The Commission has delegated authority to the Director of the Division of Corporation Finance to grant disqualification waivers under Regulation A.[805] Given the expectation of a short timeframe for crowdfunding offerings conducted pursuant to Section 4(a)(6), we are sensitive to the timeliness of the waiver application process and the risk that a lengthy review process may disadvantage issuers seeking speedy access to capital. We believe the staff has managed the process of granting waivers from Regulation A and Rule 505 disqualification appropriately in the past. Accordingly, we are proposing to clarify the existing delegation of authority to the Director of the Division of Corporation Finance by amending it to cover disqualification waivers under Section 4(a)(6).[806] This also is the same approach we took in the context of waivers for the Rule 506 disqualification rules.

The proposed rules would provide that disqualification would not arise if, before the filing of the information required by Section 4A(b), the court or regulatory authority that entered the relevant order, judgment or decree advises in writing, whether contained in the relevant judgment, order or decree or separately to the Commission or its staff, that disqualification under Section

[803] *See* proposed Rule 503(b)(4) of Regulation Crowdfunding.

[804] *See also* Applied Dynamite Letter (discussing difficulties associated with satisfying certain disqualification criteria with confidence).

[805] *See* Rule 30–1(b) of our Rules of Organization and Program Management [17 CFR 200.30–1(b)].

[806] *See* proposed paragraph (d) to Rule 30–1 of our Rules of Organization and Program Management.

4(a)(6) should not arise as a consequence of such order, judgment or decree. Because disqualification would not arise in those circumstances, no waiver would be needed. This automatic exception from disqualification is similar to that in NASAA's approved Model Accredited Investor Exemption (''MAIE''), adopted in 1997, and Uniform Limited Offering Exemption (''ULOE''), adopted in 1983 and again in 1989. Under both the MAIE and ULOE, disqualification is waived if, among other things, the regulator issuing the relevant order determines that disqualification is not necessary under the circumstances.[807] We believe that including this automatic exception from disqualification is appropriate because it allows the relevant authorities to determine the impact of their roles, and it conserves Commission resources (which might otherwise be devoted to consideration of waiver applications) in cases where the relevant authority determines that disqualification from offerings made in reliance on Section 4(a)(6) is not warranted. This is the same as the approach in the Rule 506 disqualification rules.

Request for Comment

273. The proposed rules contemplate that the Commission could grant a waiver of disqualification under certain circumstances. Is this approach appropriate? Why or why not? What should constitute ''good cause'' for purposes of seeking a waiver? Are there specific circumstances under which a waiver is appropriate (*e.g.* change of control, change of supervisory personnel, absence of notice and opportunity for a hearing)? If so, what are they?

274. Should we delegate authority to the Director of the Division of Corporation Finance to grant disqualification waivers under Section 4(a)(6), as proposed? Why or why not?

275. Is it appropriate to include an automatic exception from disqualification where the relevant authority concludes that disqualification under Section 4(a)(6) should not arise as a consequence of such order, judgment or decree, as proposed? If not, why not? Should we expand or limit this automatic exception? Please explain.

v. Transition Issues

The proposed rules would specify that disqualification under Section 4(a)(6) would not arise as a result of events occurring before the effective date of Regulation Crowdfunding, when adopted.[808] This is consistent with the approach we took with respect to the Rule 506 disqualification rules. We believe this approach would address concerns about the potential unfairness of a retroactive application of the disqualification provisions, such as to persons who settled actions prior to the enactment of the JOBS Act and the adoption of rules to implement the JOBS Act.

In lieu of imposing disqualification for pre-existing events, the proposed rules would require disclosure in the offering materials of matters that would have triggered disqualification had they occurred after the effective date of proposed Regulation Crowdfunding.[809] We believe this disclosure would put investors on notice of events that would, but for the timing of such events, disqualify offerings under Section 4(a)(6) that they are evaluating as potential investments. We also believe that this disclosure is particularly important because, as a result of the implementation of Section 302(d), investors may have the impression that all bad actors would now be disqualified from participating in offerings under Section 4(a)(6). We expect that issuers would give reasonable prominence to the disclosure to ensure that information about pre-existing bad actor events would be appropriately presented in the total mix of information available to investors. If disclosure of a pre-existing, otherwise disqualifying event is required and not adequately provided to an investor, we do not believe relief would be available under the proposed rules,[810] which provide that insignificant deviations from Regulation Crowdfunding requirements would not necessarily result in loss of the exemption.

Request for Comment

276. Should we impose disqualification for all pre-existing events, regardless of whether they occurred before the effectiveness of the final rules, or only for events after effectiveness? Why or why not? Should we treat different types of pre-existing events differently? Why or why not? If so, in either case, how should we address concerns about the fairness of retroactive application of the disqualification provisions to actions that took place prior to the enactment of the JOBS Act and the adoption of rules implementing the JOBS Act?

277. The proposed rules would specify that disqualification under Section 4(a)(6) would not arise as a result of events occurring before the effective date of proposed Regulation Crowdfunding. Should we limit disqualification to events occurring after the enactment of the JOBS Act instead? Why or why not?

278. Is it appropriate to require disclosure of matters that would have triggered disqualification had they occurred after the effective date of proposed Regulation Crowdfunding? Is there a better method of putting investors on notice of bad actor involvement? If so, what method? If disclosure of a pre-existing triggering event is required and not adequately provided to an investor, should relief for insignificant deviations from Regulation Crowdfunding requirements be available? Why or why not?

b. Intermediaries and Certain Other Associated Persons

As noted above, Section 302(d)(1)(B) requires the Commission to establish disqualification provisions under which an intermediary would not be eligible to effect or participate in transactions conducted pursuant to Securities Act Section 4(a)(6). Section 302(d)(2) requires that the disqualification provisions we propose be substantially similar to the provisions of Securities Act Rule 262, which applies to issuers. Exchange Act Section 3(a)(39)[811] currently defines the circumstances in which a broker would be subject to a ''statutory disqualification'' with respect to membership or participation in a self-regulatory organization such as FINRA or any other registered national securities association. We believe that the definition of ''statutory disqualification'' under Section 3(a)(39) is substantially similar to, while somewhat broader than, the provisions of Rule 262.[812]

[807] *See* MAIE paragraph (D)(2)(b), *available at http://www.nasaa.org/wp-content/uploads/2011/07/24-Model_Accredited_Investor_Exemption.pdf*; Peter M. Fass and Derek A. Wittner, *Blue Sky Practice for Public and Private Direct Participation Offerings*, Appendix 9A, paragraph B.6 (Thompson Reuters/West 2008).

[808] *See* proposed Rule 503(b)(1) of Regulation Crowdfunding.

[809] *See* proposed Rule 201(u) of Regulation Crowdfunding.

[810] *See* proposed Rule 502 of Regulation Crowdfunding.

[811] 15 U.S.C. 78c(39).

[812] There are certain differences between Exchange Act Section 3(a)(39) and Rule 262. For example, while Rule 262 refers to orders that had been entered into within five years prior to a filing, there is no similar time restriction in Section 3(a)(39). Unlike Rule 262, Section 3(a)(39) extends disqualification to persons who, by their conduct while associated with brokers or dealers (among other types of regulated entities), have been found to be a cause of any effective, relevant suspension, expulsion or order. Section 3(a)(39) also subjects persons to disqualification if they had been

The proposed rules would prohibit any person subject to a statutory disqualification as defined in Exchange Act Section 3(a)(39) from acting as, or being an associated person of, an intermediary unless permitted to do so by Commission rule or order.[813] The term ''subject to a statutory disqualification'' has an established meaning under Exchange Act Section 3(a)(39) and defines circumstances that would subject a person to a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization.[814] Because funding portals, like broker-dealers, would be members of FINRA or any other registered national securities association, we anticipate that they would take appropriate steps to check the background of any person seeking to become associated with them, including whether such person is subject to a statutory disqualification. In addition, we propose to clarify that associated persons of intermediaries engaging in transactions in reliance on Section 4(a)(6) must comply with Exchange Act Rule 17f–2, relating to the fingerprinting of securities industry personnel. Exchange Act Rule 17f–2 would apply to all brokers, including registered funding portals. The proposed instructions to Rule 503(d) would clarify that Rule 17f–2 requires that, unless subject to an exemption, every broker shall require that each of its partners, directors, officers and employees be fingerprinted and shall submit, or cause to be submitted, the fingerprints of such persons to the Attorney General of the United States or its designee for identification and appropriate processing. We believe that consistent standards for all intermediaries would assist FINRA or any other registered national securities association in monitoring compliance and enforcing its rules across its members.

We are proposing to apply to intermediaries the standard of Section 3(a)(39) rather than Rule 262 or the disqualification rules we are proposing for issuers, in part because the Section 3(a)(39) standard is already an established one among financial intermediaries and their regulators. We believe that the practices that have evolved around the Section 3(a)(39) standards have evolved in a manner appropriate to intermediaries, and that to impose a new or different standard only for those intermediaries that engage in transactions in reliance on Section 4(a)(6), could create confusion and unnecessary burdens on market participants. Unnecessary burdens would arise in particular for brokers that act as intermediaries in transactions in reliance on Section 4(a)(6), as they and their associated persons would become subject to two distinct standards for disqualification. Consistent standards for all brokers and funding portals would also assist FINRA or any other registered national securities association in monitoring compliance and enforcing its rules across its members.

Request for Comment

279. Is the standard for ''subject to a statutory disqualification'' as defined in Exchange Act Section 3(a)(39) appropriate for purposes of establishing disqualification provisions for intermediaries in crowdfunding transactions made in reliance on Section 4(a)(6)? Why or why not? If another standard would be appropriate, why should that standard be used instead of Section 3(a)(39)? If we were to use another standard for funding portals, should we also use that standard for brokers' crowdfunding activities? Or, should brokers adhere to the Section 3(a)(39) standard for all their activities, including crowdfunding?

280. Should we instead propose rules that mirror the disqualification rules we are proposing for issuers? If we were to take this approach, would any particular disqualification provision need to be tailored for intermediaries engaging in crowdfunding transactions? Are there unintended consequences of having different disqualification standards for issuers and for intermediaries? Please explain.

281. Should any of the differences between Rule 262 and Section 3(a)(39) be addressed? Why or why not? If so, how should we address them?

282. Should we permit intermediaries to determine how best to screen associated persons to ensure they are not subject to a statutory disqualification? Why or why not? If so, should we propose particular standards, or a level of care, applicable to this screening?

283. Should we prescribe specific steps that an intermediary must take to ascertain whether an associated person should be prohibited from participating in or effecting crowdfunding transactions in reliance on Section 4(a)(6)? If so, what should those steps be?

284. Should we permit intermediaries to reasonably rely on the representations of associated persons regarding statutory disqualification if the intermediary otherwise has conducted a background check on the associated person?

F. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules and form amendments, specific issues discussed in this release and other matters that may have an effect on the proposed rules. We particularly welcome comments from issuers, investors, state regulators and other market participants. With regard to any comments, we note that such comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments. We urge commenters to be as specific as possible.

III. Economic Analysis

Title III sets forth a comprehensive regulatory structure for startups and small businesses to raise capital through securities offerings using the Internet through crowdfunding. In particular, Title III provides an exemption from registration for certain offerings of securities by adding Securities Act Section 4(a)(6). In addition, Title III:

- Adds Securities Act Section 4A, which requires, among other things, that issuers and intermediaries that facilitate

convicted of, in addition to certain specified offenses related to securities and funds, any felony within ten years of filing to apply for membership or participation in, or to become associated with a member of, an SRO; the comparable provisions of Rule 262 are, in contrast, limited to felonies or misdemeanors relating to the purchase or sale of securities. Section 3(a)(39) covers suspensions, expulsions and orders by both U.S. and non-U.S. regulators and SROs (or their equivalents), whereas Rule 262 covers suspensions, expulsions and orders by only U.S.-registered SROs, as well as orders, judgments and decrees of any court of competent jurisdiction. Finally, Rule 262 disqualifies a person, while Section 3(a)(39) does not, for being subject to a U.S. Postal Service false representation order, or subject to a temporary restraining order or preliminary injunction, entered under 39 U.S.C. 3005 or 39 U.S.C. 3007, respectively, within 5 years prior to a filing. Despite these differences, we believe that Section 3(a)(39) and Rule 262 are substantially similar in particular with regard to the persons and events they cover, their scope and their purpose.

[813] *See* proposed Rule 503(d) of Regulation Crowdfunding.

[814] Events that could result in a statutory disqualification for an associated person under Section 3(a)(39) include, but are not limited to: certain misdemeanor and all felony criminal convictions; temporary and permanent injunctions issued by a court of competent jurisdiction involving a broad range of unlawful investment activities; expulsions (and current suspensions) from membership or participation in an SRO; bars (and current suspensions) ordered by the Commission or an SRO; denials or revocations of registration by the CFTC; and findings by the Commission, CFTC or an SRO that a person: (1) ''willfully'' violated the federal securities or commodities laws, or the Municipal Securities Rulemaking Board (MSRB) rules; (2) ''willfully'' aided, abetted, counseled, commanded, induced or procured such violations; or (3) failed to supervise another who commits violations of such laws or rules. 15 U.S.C. 78c(a)(39).

transactions between issuers and investors provide certain information to investors and potential investors, take certain actions and provide notices and other information to the Commission;

- Adds Exchange Act Section 3(h), which requires the Commission to adopt rules to exempt, either conditionally or unconditionally, funding portals from having to register as brokers or dealers pursuant to Exchange Act Section 15(a)(1);
- Includes disqualification provisions under which an issuer would not be able to avail itself of the exemption for crowdfunding if the issuer or other related parties, including an intermediary, were subject to a disqualifying event; and
- Adds Exchange Act Section 12(g)(6), which requires the Commission to adopt rules to exempt from Section 12(g), either conditionally or unconditionally, securities acquired pursuant to an offering made in reliance on Section 4(a)(6).

As discussed in detail above, we are proposing Regulation Crowdfunding to implement the requirements of Title III. The proposed rules would implement the new exemption for the offer and sale of securities pursuant to the requirements of Section 4(a)(6) and provide a framework for the regulation of issuers and intermediaries, which includes brokers and funding portals engaging in such transactions. The proposed rules also would exempt securities offered and sold in reliance on Section 4(a)(6) from the registration requirements of Exchange Act Section 12(g).

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Securities Act Section 2(a) and Exchange Act Section 3(f) require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Exchange Act Section 23(a)(2) requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The discussion below addresses the economic effects of the proposed rules, including the likely costs and benefits of proposed Regulation Crowdfunding, as well as the likely effect of the proposed rules on efficiency, competition and capital formation. Given the specific language of the statute and our understanding of Congress's objectives, we believe that it is appropriate for the proposed rules to follow the statutory provisions closely. We nonetheless also rely on our discretionary authority to propose certain additional provisions. While the costs and benefits of the proposed rules in large part stem from the statutory mandate of Title III, certain costs and benefits are affected by the discretion we propose to exercise in connection with implementing this mandate. For purposes of this economic analysis, we address the costs and benefits resulting from the mandatory statutory provisions and our exercise of discretion together, because the two types of benefits and costs are not separable.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of the proposed rules.

A. Economic Baseline

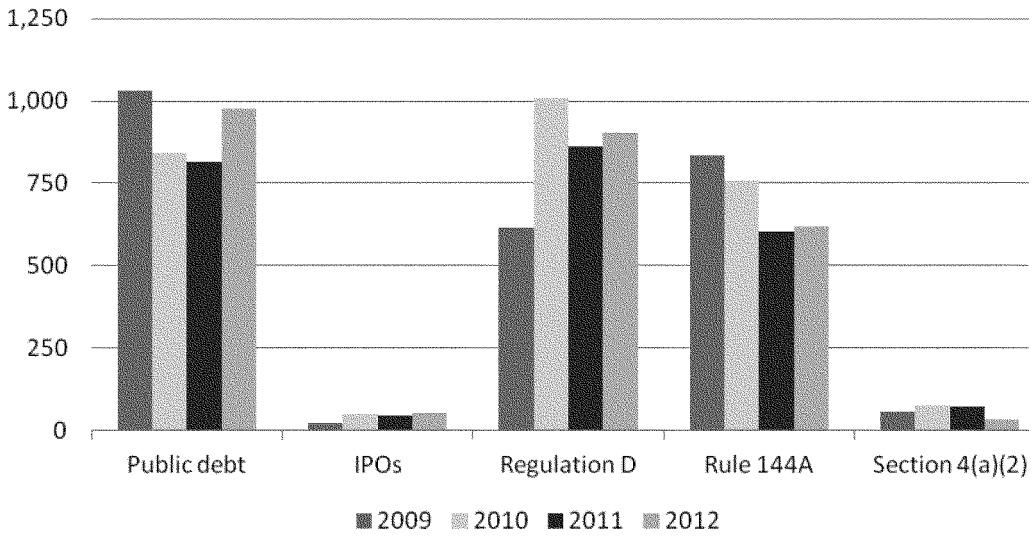
The baseline for our economic analysis of proposed Regulation Crowdfunding, including the baseline for our consideration of the effects of the proposed rules on efficiency, competition and capital formation, is the situation in existence today, in which startups and small businesses seeking to raise capital through securities offerings must register the offer and sale of securities under the Securities Act unless they can rely on an existing exemption from registration under the federal securities laws. Moreover, under existing requirements, intermediaries intending to facilitate such transactions generally are required to register with the Commission as broker-dealers under Exchange Act Section 15(a). Finally, under existing exemptions from the registration requirements of the Securities Act, small investors may be limited in their ability to participate in offerings of securities of nonpublic companies.[815]

1. Existing Funding Sources Available to Startups and Small Businesses

The potential economic impact of the proposed rules, including their effect on efficiency, competition and capital formation, will depend on how the crowdfunding method of raising capital compares to existing methods that startups and small businesses currently use for raising capital. Startups and small businesses can potentially tap a variety of financing sources in the capital markets: Debt, equity or hybrid security offerings; registered or unregistered offerings; and bank loans. The figure below plots the capital raising by various sources for the period 2009–2012.[816] As evident from the data, significant fundraising in the capital markets takes place via public debt, Regulation D offerings (which include equity, debt and hybrid security offerings) and Rule 144A offerings (which include predominantly debt securities).

[815] For example, only up to 35 non-accredited investors are allowed to participate in the most frequently used Regulation D exemption, Securities Act Rule 506(b) (17 CFR 230.506(b)), and these investors must meet certain sophistication requirements.

[816] These statistics are based on a review of Form D electronic filings with the Commission—specifically, the ''total amount sold'' as reported in the filings—and data regarding other types of offerings (*e.g.,* public debt offerings and Rule 144A offerings) from Securities Data Corporation's New Issues database (Thomson Financial). *See* Vladimir Ivanov and Scott Bauguess, *Capital Raising in the U.S.: An Analysis of Unregistered Offerings Using the Regulation D Exemption, 2009–2012* (July 2013) (''*Ivanov/Bauguess Study*''), *available at http://www.sec.gov/divisions/riskfin/whitepapers/dera-unregistered-offerings-reg-d.pdf.* Data on new bank loans per year is not available.



Startups and small businesses seeking to raise capital can register the offer and sale of securities under the Securities Act. Registered offerings, however, are generally too costly to be viable alternatives for startups and small businesses. In particular, issuers conducting registered offerings must usually pay underwriter commissions, which are, on average, 7% for initial public offerings, 5.4% for follow-on equity offerings and between 0.9% and 1.5% for issuers raising capital through public bond issuances.[817] Issuers conducting registered offerings also must pay Commission registration fees and FINRA or any other registered national securities association filing fees, legal and accounting fees and expenses, transfer agent and registrar fees, costs associated with periodic reporting requirements and other regulatory requirements and various other fees. Two surveys concluded that the average cost of achieving initial regulatory compliance for an initial public offering is $2.5 million, followed by an ongoing compliance cost, once public, of $1.5 million per year.[818] Hence, for an issuer seeking to raise less than $1 million, a registered offering is not economically feasible if it would cost an estimated $2.5 million, on average, to achieve initial regulatory compliance for an initial public offering.[819]

The alternative to raising capital via registered offerings is for startups and small businesses to offer and sell securities by relying on an existing exemption from registration under the federal securities laws. For example, they could rely on current exemptions from registration under the Securities Act, such as Section 3(a)(11), Section 4(a)(2),[820] Regulation D[821] and Regulation A.[822] While we do not have complete data on offerings relying on an exemption under Section 3(a)(11) or Section 4(a)(2), certain data available from Regulation D and Regulation A filings allow us to gauge how frequently issuers use these exemptions when raising capital. Based on Regulation D filings by non-fund issuers[823] from 2009 to 2012, there are a substantial number of issuers who choose to raise capital by relying on Rule 506 even though their offering size would qualify for an exemption under Rule 504 or Rule 505.[824] With the recent amendment to Rule 506 of Regulation D that permits an issuer to engage in general solicitation or general advertising in offering and selling securities pursuant to Rule 506, subject to certain conditions,[825] we expect to see an even higher percentage of issuers relying on that rule. As shown in the table below reporting the number of Regulation D and Regulation A offerings by non-fund issuers, from 2009 to 2012, relatively few issuers rely on Regulation A.

	Offering size			
	< $1 Million	$1–5 million	$5–50 million	>$50 million
Rule 504	1,997			
Rule 505	705	229		
Rule 506	19,424	11,957	8,103	1,268

[817] *See, e.g.,* Hsuan-Chi Chen and Jay R. Ritter, *The Seven Percent Solution,* 55 J. Fin. 1105–1131 (2000); Shane A. Corwin, *The Determinants of Underpricing for Seasoned Equity Offers,* 58 J. Fin. 2249–2279 (2003); Lily Hua Fang, *Investment Bank Reputation and the Price and Quality of Underwriting Services,* 60 J. Fin. 2729–2761 (2005); Stephen J. Brown, Bruce D. Grundy, Craig M. Lewis and Patrick Verwijmeren, *Convertibles and Hedge Funds as Distributors of Equity Exposure,* 25 Rev. Fin. Stud. 3077–3112 (2012).

[818] *See* IPO Task Force, *Rebuilding the IPO On-Ramp,* at 9 (Oct. 20, 2011), *available at http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf* (''IPO Task Force'').

[819] *See id.*

[820] Securities Act Section 4(a)(2) provides that the provisions of the Securities Act shall not apply to ''transactions by an issuer not involving a public offering.''

[821] Regulation D provides a nonexclusive safe harbor from registration for certain types of securities offerings.

[822] Regulation A provides a conditional exemption from registration for certain small issuances.

[823] These are issuers that are not pooled investment vehicles.

[824] This tendency could, in part, be attributed to two features of Rule 506: Blue Sky law preemption and an unlimited offering amount. *See also* U.S. Government Accountability Office, *Factors That May Affect Trends in Regulation A Offerings,* GAO–12–839 (Jul. 3, 2012), *available at http://www.gao.gov/products/GAO-12-839* (''GAO Report'').

[825] *See General Solicitation Adopting Release,* note 12.

	Offering size			
	< $1 Million	$1–5 million	$5–50 million	>$50 million
Regulation A	2	14		

Note: Data comes from Form D and Form 1–A filings from 2009 to 2012. We consider only new offerings and exclude offerings with amount sold reported as $0 on Form D. We also use the maximum amount indicated in Form 1–A to determine offering size for Regulation A offerings.

Each of these exemptions, however, includes restrictions that may limit its suitability for startups and small businesses. The table below lists the main requirements of these exemptions. For example, the exemption under Securities Act Section 3(a)(11) is limited to intrastate offerings,[826] and an issuer seeking to offer and sell securities pursuant to Regulation A may be required to register in all 50 states if it intends to offer and sell the securities in all 50 states using the Internet. An issuer relying on Regulation A also would need to file with the Commission an offering document, which, coupled with the potential review of such document by the staff, has been cited as a reason why Regulation A is not widely used.[827] Issuers of securities pursuant to Securities Act Section 4(a)(2) and Rules 504, 505 and 506(b) under Regulation D generally may not engage in general solicitation and general advertising to reach potential investors, which also could place a significant limitation on offerings by startups and small businesses. Although an issuer may avoid the restriction on general solicitation and general advertising by using the services of a financial intermediary, those services may be costly.[828] While Rule 506 under Regulation D preempts the applicability of state laws regarding the offer and sale of securities and new Rule 506(c) permits general solicitation and general advertising, an issuer seeking to rely on Rule 506(c) would be limited to selling securities only to accredited investors.[829]

Type of offering	Dollar limit	Manner of offering	Issuer and investor requirements	Filing requirement	Restriction on resale	Blue sky exemption
Section 3(a)(11)	None	No limitation other than to maintain intrastate character of offering.	All issuers and investors must be resident in state. No limitation on number.	None	Rests within the state (generally a one-year period for resales within state).	Need to comply with state blue sky law by registration or state exemption.
Section 4(a)(2)	None	No general solicitation or advertising.	All issuers and investors must meet sophistication and access to information test so as not to need protection of registration.	None	Restricted securities.	Need to comply with state blue sky law.
Regulation A	$5,000,000 within prior 12 months, but no more than $1,500,000 by selling security holders.	''Testing the waters'' permitted before filing Form 1–A. Sales permitted after Form 1–A qualified.	No requirements	File test the waters documents, Form 1–A, any sales material and Form 2–A report of sales and use of proceeds with the Commission.	None; freely resalable.	Need to comply with state blue sky law.

[826] Under Securities Act Section 3(a)(11), except as expressly provided, the provisions of the Securities Act (including the registration requirement under Securities Act Section 5) do not apply to a security that is ''part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such State or Territory.''

[827] *See* Rutheford B. Campbell, Jr., *Regulation A: Small Businesses' Search for ''A Moderate Capital''*, 31 Del. J. Corp. L. 77, 106 (2006). *See also* GAO Report, note 824.

[828] An internal study by our Division of Economic and Risk Analysis covering 2009 to 2012 found that the average sales commission for Regulation D offerings for up to $1 million was 6.5%, almost three times larger than that for offerings of more than $50 million (1.9%). *See Ivanov/Bauguess Study,* note 816.

[829] *See General Solicitation Adopting Release,* note 12.

Type of offering	Dollar limit	Manner of offering	Issuer and investor requirements	Filing requirement	Restriction on resale	Blue sky exemption
Rule 504 ..... Regulation D	$1,000,000 within prior 12 months.	No general solicitation or advertising unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sales to accredited investors with general solicitation.	No requirements	File Form D with the Commission not later than 15 days after first sale. Filing not a condition of the exemption.	Restricted unless registered in a state requiring use of a substantive disclosure document or sold under state exemption for sale to accredited investors with general solicitation.	Need to comply with state blue sky law by registration or state exemption.
Rule 505 ..... Regulation D	$5,000,000 within prior 12 months.	No general solicitation or advertising.	Unlimited accredited investors and 35 non-accredited investors.	File Form D with the Commission not later than 15 days after first sale. Filing not a condition of the exemption.	Restricted securities.	Need to comply with state blue sky law.
Rule 506 ..... Regulation D	None	No general solicitation or advertising under Rule 506(b). General solicitation and general advertising permitted under Rule 506(c), provided all purchasers are accredited investors.	Under Rule 506(b), unlimited accredited investors and 35 non-accredited investors. Under Rule 506(c), all purchasers must be accredited investors.	File Form D with SEC not later than 15 days after first sale. Filing not a condition of the exemption.	Restricted securities.	Exempt as ''covered security'' pursuant to Securities Act Section 18 [15 U.S.C. 77r].

2. Current Sources of Funding for Startups and Small Businesses That Could Be Substitutes or Complements to Crowdfunding

At present, startups and small businesses can raise capital through several sources that could be close substitutes or complements to crowdfunding transactions that rely on Section 4(a)(6). These sources are either based on unregistered securities offerings or involve lending by financial institutions.

a. Family and Friends

Family and friends are sources through which startups and small businesses can raise capital. This source of capital is usually available early in the lifecycle of a small business, before the business approaches arm's-length formal financial channels.[830] Among other things, family and friends may donate funds, loan funds or acquire an equity stake in the business. A recent study of the financing choices of startups finds that most of the capital supplied by friends and family is in the form of loans.[831] In contrast to a commercial lender that, for example, would need to assess factors such as the willingness and ability of a borrower to repay the loan and the viability of its business, family and friends may be willing to assist based primarily or solely upon personal relationships. Family and friends, however, may be able to provide only a limited amount of capital compared to other sources. In addition, financial arrangements with family and friends may not be an optimal source of funding if any of the parties is untrained in the structuring of loan agreements, equity investments or in related areas of accounting. Unfortunately, there is no available data on these financing sources that could allow us to quantify their magnitude and compare them to other current sources of capital.

b. Commercial Loans, Peer-to-Peer Loans and Microfinance

Startups and small businesses also may seek loans from financial institutions.[832] A recent study of the financing choices of startups suggests that they resort to bank financing early in their lifecycle.[833] The study finds that businesses rely heavily on external debt sources such as bank financing in the first year after being formed, which comes mostly in the form of personal and commercial bank loans, business

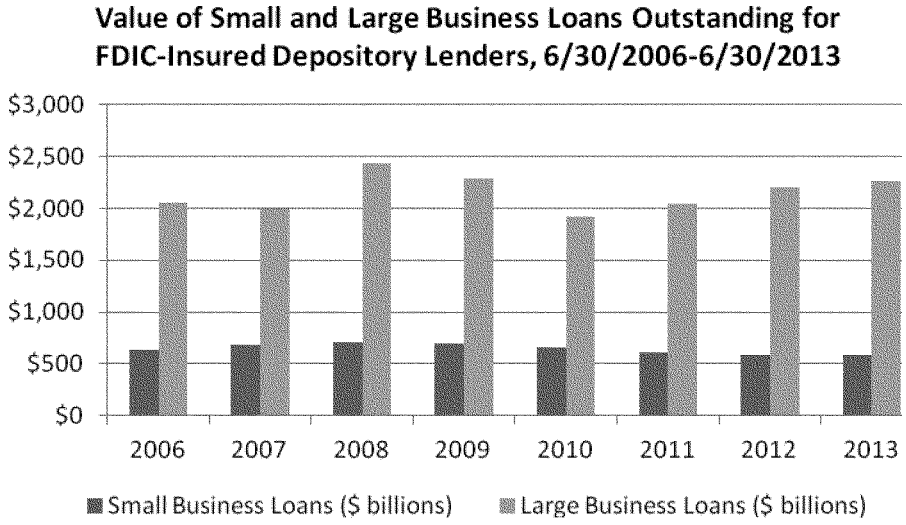
[830] *See* Paul Gompers and Josh Lerner, The Venture Capital Cycle (MIT Press 2006) (''Gompers''); Alicia M. Robb and David T. Robinson, *The Capital Structure Decisions of New Firms,* Rev. Fin. Stud. (forthcoming), *available at http://rfs.oxfordjournals.org/content/early/2012/07/07/rfs.hhs072.full.pdf+html* (''Robb'').

[831] *See* Robb, note 830.

[832] Using data from the 1993 Survey of Small Business Finance, one seminal study indicates that financial institutions account for approximately 27% of small firms' borrowings. *See* Allen N. Berger and Gregory F. Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle,* 22 J. Banking & Fin. 613 (1998). *See also* 1987, 1993, 1998 and 2003 Surveys of Small Business Finances, *available at http://www.federalreserve.gov/pubs/oss/oss3/nssbftoc.htm.* The Survey of Small Business Finances was discontinued after 2003. Using data from the Kauffman Foundation Firm Surveys, one study finds that 44% of startups use loans from financial institutions. *See* Rebel A. Cole and Tatyana Sokolyk, *How Do Start-Up Firms Finance Their Assets? Evidence from the Kauffman Firm Surveys* (2012), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028176.*

[833] *See* Robb, note 830.

credit cards and credit lines. Another recent report, however, suggests that bank lending to small businesses fell by $100 billion from 2008 to 2011 and that by 2012, less than one-third of small businesses reported having a business bank loan.[834] Our analysis of lending data from FDIC-insured depository institutions from June 30, 2006 until June 30, 2013 also shows that both small business loans (those for up to a $1 million) and large business loans (those greater than $1 million) experienced a decline from the peak in 2008.[835] Small business loans, however, declined continuously over the period by approximately 18% from 2008 until 2013. Large business loans, on the other hand, range from a high of $2,440 billion in 2008 to a low of $1,924 billion in 2010. The figure shows that this segment of the loan market has shown steady increases since 2010.



Additionally, although covering the pre-recessionary period, a Federal Reserve Board staff study analyzing data from the 2003 Survey of Small Business Finance suggests that 60 percent of small businesses have outstanding credit in the form of a credit line, a loan or a capital lease.[836] These loans were borrowed from two types of financial institutions—depositary and non-depositary institutions (*e.g.,* finance companies, factors or leasing companies).[837] Lines of credit were the most widely used type of credit.[838] Other types of loans included mortgage loans, equipment loans and motor vehicle loans.[839]

Various loan guarantee programs of the Small Business Administration (''SBA'') make credit more accessible to small businesses by either lowering the interest rate of the loan or enabling a market-based loan that a lender would not otherwise be willing to provide, absent a guarantee.[840] Although the SBA does not itself act as a lender, the agency guarantees a portion of loans made and administered by commercial lending institutions. SBA loan programs include 7(a) loans,[841] CDC/504 loans [842] and Microloans.[843] For example, in fiscal year 2011, the SBA approved approximately $30.5 billion in 7(a) and CDC/504 loans, which were distributed to approximately 54,500 small businesses.[844] The SBA, however, currently accounts for a small part of the overall small business lending in the United States, administering less than 2 percent of all small business loans.[845]

Many startups and small businesses may find loan requirements imposed by financial institutions difficult to meet and may not be able to rely on these institutions to secure funding. For example, financial institutions generally require a borrower to provide collateral

[834] *See* The Kauffman Foundation, *2013 State of Entrepreneurship Address* (Feb. 5, 2013), *available at http://www.kauffman.org/uploadedFiles/DownLoadableResources/SOE%20Report_2013pdf.pdf.* The report cautions against prematurely concluding that banks are not lending enough to small businesses as the sample period of the study includes the most recent recession.

[835] We define business loans to include commercial and industrial loans and commercial real estate loans. *See* Federal Deposit Insurance Corporation, *Statistics on Banking, available at http://www2.fdic.gov/SDI/SOB/.*

[836] *See* Federal Reserve Board, *Financial Services Used by Small Businesses: Evidence from the 2003 Survey of Small Business Finances* (October 2006), *available at http://www.federalreserve.gov/pubs/bulletin/2006/smallbusiness/smallbusiness.pdf* (''2003 Survey'').

[837] *See* Rebel Cole, *What Do We Know About the Capital Structure of Privately Held Firms? Evidence from the Surveys of Small Business Finance* (Working Paper) (Feb. 2013), *available at http://onlinelibrary.wiley.com/doi/10.1111/fima.12015/pdf.*

[838] *See* 2003 Survey, note 836 (estimating that 34% of small businesses use lines of credit).

[839] *Id.*

[840] Numerous states also offer a variety of small business financing programs, such as Capital Access Programs, collateral support programs and loan guarantee programs. These programs are eligible for support under the State Small Business Credit Initiative, *available at http://www.treasury.gov/resource-center/sb-programs/Pages/ssbci.aspx.*

[841] 15 U.S.C. 631 *et seq.* The 7(a) loans provide small businesses with financing guarantees for a variety of general business purposes through participating lending institutions.

[842] 15 U.S.C. 695 *et seq.* The CDC/504 loans are made available through ''certified development companies'' or ''CDCs'', typically structured with the SBA providing 40% of the total project costs, a participating lender covering up to 50% of the total project costs and the borrower contributing 10% of the project costs.

[843] 15 U.S.C. 631 *et seq.* The Microloan program provides small, short-term loans to small businesses and certain types of not-for-profit childcare centers. The maximum loan amount is $50,000, but the average microloan is about $13,000. *See Microloan Program,* U.S. Small Business Administration, *available at http://www.sba.gov/content/microloan-program.*

[844] *See* U.S. Small Business Administration, *FY 2013 Congressional Budget Justification And FY 2011 Annual Performance Report* (''*2011 Annual Performance Report''*), *available at http://www.sba.gov/sites/default/files/files/1–508%20Compliant%20FY%202013%20CBJ%20FY%202011%20APR%281%29.pdf.*

[845] One article notes that as of September 2012, the SBA managed 318,396 ($79 billion) loans, while there were 17,249,884 ($646 billion) small-business loans on the books of banks insured by the FDIC. By this measure, the SBA managed 1.85% (12.23% in dollar volume) of all small-business loans. *See* Ami Kassar, *Putting the S.B.A. Into Perspective,* N.Y. Times, Sept. 14, 2012, *available at http://boss.blogs.nytimes.com/2012/09/14/putting-the-s-b-a-into-perspective/.* The SBA recently proposed rule amendments to increase eligibility for loans under the SBA's business loan programs. *See* SBA 504 and 7(a) Regulatory Enhancements, 13 CFR 120 (proposed Feb. 25, 2013).

and/or a guarantee,[846] which startups, small businesses and their owners may not be able to provide. Collateral may be required even for loans guaranteed by the SBA.

Another source of debt financing for startups and small businesses is peer-to-peer lending, which, according to one study, began developing in 2005.[847] Peer-to-peer lending Web sites facilitate debt transactions by directly connecting borrowers and lenders over the Internet. While data on the size of the overall industry is sparse, peer-to-peer lending was estimated to have reached approximately $647 million in 2009 and was expected to grow to $5.8 billion by 2010.[848] Although this source of funding is small relative to the role of financial institutions, peer-to-peer lending sites may offer small businesses more flexibility with regard to pricing, terms of credit, repayment schedules and other conditions. Moreover, peer-to-peer lending sites may not require borrowers to post collateral or a guarantee, and some market participants offer a secondary market for loans originated on their own sites.[849] At least one of the existing peer-to-peer platforms sells third-party issued securities to multiple individual investors, thus improving the liquidity of these securities.[850] Like any traditional lending arrangement, however, borrowers on peer-to-peer lending sites are required to make fixed regular payments to their lenders, which might make it a less attractive option for small businesses with negative cash flows and short operating histories, both of which may make it more difficult for such businesses to demonstrate their ability to repay loans.

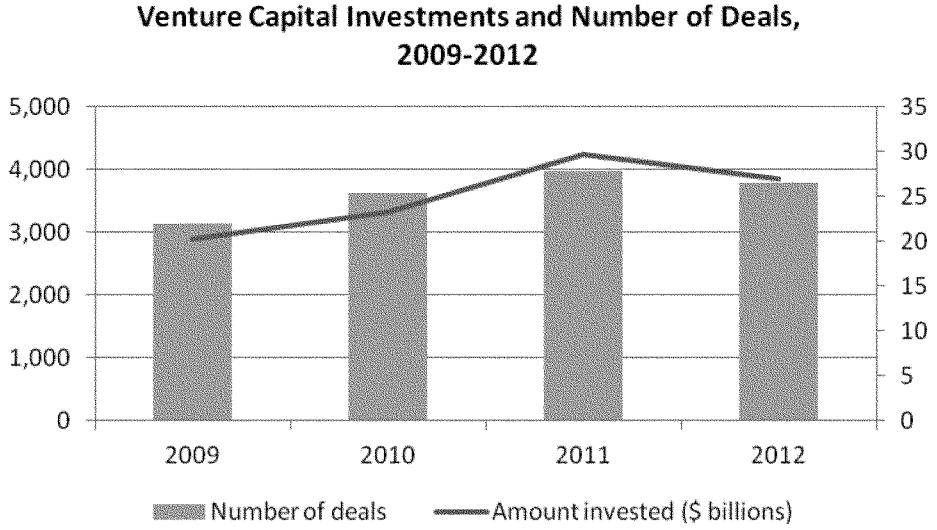
Microfinance also is another source of debt financing for startups and small businesses. Microfinance consists of small, working capital loans provided by microfinance institutions (''MFIs'') that are invested in microenterprises or income-generating activities.[851] The typical users of microfinance services and, in particular, of microcredits are family-owned enterprises or self-employed, low-income entrepreneurs, such as street vendors, farmers, service providers, artisans and small producers, who live close to the poverty line in both urban and rural areas.[852]

The microfinance market has evolved and grown considerably in the past decades. While data on the size of the overall industry is sparse, in 2008, it was estimated that there were between 7,000 and 10,000 MFIs globally that supplied an estimated $15 to $25 billion in loans.[853] In the U.S., there were about 362 MFIs who disbursed 9,100 loans for a total value of $100 million.[854] On average, U.S. microloans are relatively larger with lower interest rates than those of microloans in developing countries. One distinctive characteristic of the U.S. model of microfinance is that MFIs provide borrowers not only with funds, but also with educational services to build entrepreneurial and leadership skills.[855]

c. Venture Capitalists and Angel Investors

Startups and small businesses also may seek funding from venture capitalists (''VCs'') and angel investors. Entrepreneurs seek VC and angel financing usually after they have exhausted other sources of capital that generally do not require the entrepreneurs to relinquish control rights (for example, personal funds and funds from family and friends, if available).

As the chart below shows, according to data from the National Venture Capital Association, in 2012, VCs invested approximately $27 billion in approximately 3,800 deals that included seed, early-stage, expansion, and late-stage companies.[856]



[846] Approximately 92% of all small business debt to financial institutions is secured, and about 52% of that debt is guaranteed, primarily by the owners of the firm. *See* Berger, note 832.

[847] *See* Ian Galloway, *Peer-to-Peer Lending and Community Development Finance,* Federal Reserve Bank of San Francisco (Working Paper) (2009), *available at http://www.frbsf.org/publications/community/wpapers/2009/wp2009–06.pdf.*

[848] *Id.*

[849] *Id.*

[850] *Id.* We note that under current law, this activity would require broker-dealer registration.

[851] *See* Craig Churchill and Cheryl Frankiewicz, *Making Microfinance Work: Managing for Improved Performance,* Geneva International Labor Organization (2006).

[852] *See* Joanna Ledgerwood, *Microfinance Handbook: An Institutional and Financial Perspective,* Washington DC, World Bank Publications (1999).

[853] *See* Sam Daley-Harris, *State of Microcredit Summit Campaign Report 2009,* Washington DC, Microcredit Summit Campaign (2009).

[854] *See* FIELD at the Aspen Institute, *Key Data on the Scale of Microlending in the U.S.* (February 2011).

[855] *Id.* at 4 and 13.

[856] *See* National Venture Capital Association, *Recent Stats & Studies, available at http://www.nvca.org/index.php?option=com_content&view=article&id=344&Itemid=103.*

Some startups, however, may struggle to attract funding from VCs because VCs tend to invest in startups with certain characteristics. A defining feature of VCs is that they tend to focus exclusively on startup companies with high-growth potential and a high likelihood of going public after a few years of financing. VCs also tend to invest in companies that have already used some other sources of financing, tend to be concentrated in certain geographic regions (*e.g.,* California and Massachusetts) and often require their investments to have an attractive business plan, meet certain growth benchmarks or fill a specific portfolio or industry niche.[857] In addition, when investing in companies, VCs tend to acquire significant control rights (*e.g.,* board seats, rights of first refusal, etc.), which they gradually relinquish as the company approaches an initial public offering.[858]

According to a trade association, the Angel Capital Association, in 2006, the 5,632 accredited angel investors in its member groups made 947 investments in 512 companies, providing startups with a total of $228.8 million.[859] A study suggests that angel investors tend to invest in younger companies than VCs.[860] We do not have more detailed data on the amount of angel investments in more recent years.

d. Current Crowdfunding Practices

Currently in the United States, crowdfunding activity generally is lending-based, ''reward-based'' or ''donation-based,'' as defined by a recent crowdfunding industry report.[861] The report defines reward-based crowdfunding as a model where funders receive a ''reward,'' such as a token or a manufactured product sample, and it defines donation-based crowdfunding as a model where funders donate to causes that they want to support, with no expected compensation or return on their investment. Many of the current domestic crowdfunding offerings relate to individual projects and may not have a defined or sustained business model commensurate with typical issuers of securities. The industry report finds that more than half of all projects on one of the largest domestic crowdfunding sites during the period 2009 through 2011 involved film and musical endeavors.[862]

According to the industry report, approximately $1.5 billion in financing was raised through crowdfunding platforms during 2011, with over half of that amount raised in the United States, although only approximately $174 million was attributable to ''equity-based'' (or the equity model of crowdfunding) and ''reward-based'' crowdfunding.[863] The industry report further states that equity-based crowdfunding is the fastest-growing of all the crowdfunding categories, at a 114% compound annual growth rate (''CAGR'') in 2011.[864] According to the report, the rapid growth in equity-based crowdfunding has been driven largely by European platforms.[865]

According to the industry report, most current crowdfunding projects solicit low levels of funding, with the average successful project receiving less than $10,000.[866] The industry report also states that, in 2011, equity-based offerings were, on average, much larger than donation-based offerings, with 68% of total funds raised on equity-based crowdfunding platforms drawing $50,000 or more in financing, suggesting that the types of ventures financed through equity-based crowdfunding could be different than those financed through other crowdfunding methods.[867] Because the prohibition on general solicitation and general advertising (which was recently lifted for offerings made in reliance on Rule 506(c) of Regulation D [868]) would have made equity-based crowdfunding difficult in the United States, we assume that the data for equity-based crowdfunding comes from offerings outside the United States.

We are unaware of any domestic issuers and investors that are currently participating in securities-based crowdfunding offerings on Internet-based crowdfunding platforms that are operating outside of the United States (other than offerings made in reliance on Rule 506(c) of Regulation D), although we recognize that these platforms may represent an additional source of funding for startups and small businesses.

3. Survival Rates for Startups and Small Businesses

Startups and small businesses that lack tangible assets or business experience needed to obtain conventional financing might turn to securities-based crowdfunding in reliance on Section 4(a)(6) as an attractive potential source of financing. There is broad evidence that many of these potential issuers are likely to fail after receiving funding. For example, a 2010 study reports that of a random sample of 4,022 new high-technology businesses started in 2004, only 68% survived by the end of 2008.[869] Other studies also have documented high failure rates for small newly listed companies. For example, the ten-year delist rate for newly listed firms during the period 1981–1991 is 44.1%, compared to 16.9% for newly listed firms in the 1970s.[870]

Similarly, other studies suggest that startups and small businesses financed by venture capitalists also tend to have high failure rates. One study finds that for 16,315 VC-backed companies that received their first institutional funding round between 1980 and 1999, approximately one-third failed after the first funding round.[871] Additionally a recent study of more than 2,000 companies that received at least $1 million in venture funding, from 2004 through 2010, finds that almost three-quarters of these companies failed.[872]

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[857] *See* Gompers, note 830.

[858] *See* Steven N. Kaplan and Per Stromberg, *Financial Contracting Meets the Real World: An Empirical Analysis of Venture Capital Contracts,* 70 Rev. Econ. Stud. 281–316 (2003).

[859] *See* Scott Shane, *The Importance of Angel Investing in Financing the Growth of Entrepreneurial Ventures,* 2 Q. J. of Fin. (2012).

[860] *See* Gompers, note 830.

[861] *See* Massolution, *Crowdfunding Industry Report: Market Trends, Composition and Crowdfunding Platforms* (Abridged) (May 2012), *available at http://www.crowdsourcing.org/document/crowdfunding-industry-report-abridged-version-market-trends-composition-and-crowdfunding-platforms/14277* (''Massolution''). Lending-based crowdfunding includes peer-to-peer lending, a funding source that is discussed above. *Id.*

[862] *Id.*

[863] One observer stated that most of the $1.5 billion in financing cited in the Massolution industry report was attributable to ''donation-based'' and ''lending-based'' crowdfunding. *See* Felix Salmon, *Annals of Dubious Statistics, Crowdfunding Edition,* REUTERS (July 27, 2012), *available at http://blogs.reuters.com/felix-salmon/2012/07/27/annals-of-dubious-statistics-crowdfunding-edition.* Another observer reported that Massolution CEO Carl Esposti clarified that the amount directly attributed to reward-based and equity-based crowdfunding is $174 million. *See* Liz Gannes, *Widely Cited Crowdfunding Market Estimates Are Probably Too Optimistic,* ALLTHINGSD (July 28, 2012), *available at http://allthingsd.com/20120728/crowdfunding-market-nearly-10-times-smaller-than-widely-cited-estimate.*

[864] *See* Massolution, note 861 at 17. By comparison, ''reward-based'' crowdfunding had a 79% CAGR in 2011, while ''lending-based'' crowdfunding and ''donation-based'' crowdfunding had CAGRs of 50% and 41%, respectively.

[865] *Id.*

[866] *Id.* at 20–21.

[867] *Id.* at 20–21.

[868] *See General Solicitation Adopting Release,* note 12.

[869] *See* Alicia Robb, E.J. Reedy, Janice Ballou, David DesRoches, Frank Potter and Zhanyun Zhao, *An Overview of the Kauffman Firm Survey: Results from the 2004–2008 Data,* Kauffman Foundation (''Kauffman Firm Survey''), *available at http://www.kauffman.org/uploadedFiles/kfs_2010_report.pdf.*

[870] *See* Eugene F. Fama and Kenneth R. French, *New Lists: Fundamentals and Survival Rates,* 73 J. of Fin. Econ. 229–269 (2004).

[871] *See* Yael V. Hochberg, Alexander Ljungqvist and Yang Lu, *Whom You Know Matters: Venture Capital Networks and Investment Performance,* 62 J. of Fin. 251–301 (2007).

[872] *See* Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-Ups Fail,* Wall St. J., Sept. 19, 2012.

These failure rates are high, despite the involvement of sophisticated investors like VCs that are likely better equipped than the average retail investor to deal with uncertainty and risk associated with investments in startups and that generally specialize in selecting firms with good prospects, have direct access to management, have board representation and have at least some degree of control over operating decisions.

Because we expect that issuers that would engage in offerings made in reliance on Section 4(a)(6) would potentially be in an earlier stage of business development than the businesses included in the above studies, we believe that issuers that engage in securities-based crowdfunding may have higher failure rates than those in the studies cited above.[873]

4. Market Participants

The proposed rules will have their most significant impact on the market for the financing of startups and small businesses. The number of participants in this market and the amounts raised through alternative sources indicate that this is a large market. In 2011, there were almost 5 million small businesses, defined by the U.S. Census Bureau as having fewer than 500 paid employees.[874] In the same year, FDIC-insured depositary institutions held approximately $626 billion in small business loans,[875] and VCs contributed an additional $30 billion of capital to startups and small businesses.[876]

We analyze the economic effect of the proposed rules on the following parties: (1) Issuers, typically startups and small businesses seeking to raise capital by issuing securities; (2) intermediaries, through which issuers seeking to engage in transactions in reliance on Section 4(a)(6) will offer and sell their securities; (3) investors who purchase or may consider purchasing securities in such offerings; and (4) other capital providers, broker-dealers and finders who currently participate in private offerings. The potential economic impact of the proposed rules will depend on how these market participants respond to the proposed rules. Each party is discussed in further detail below.

a. Issuers

The proposed rules would permit certain entities to raise capital by issuing securities for the first time. The number, type and size of the potential issuers that would seek to use crowdfunding to offer and sell securities in reliance on Section 4(a)(6) is uncertain, but data regarding current market practices may help identify the number and characteristics of potential issuers.

Although it is not possible to predict the number of future securities offerings that might rely on Section 4(a)(6), particularly because rules governing the process are not yet in place, we estimate that the number could be in the thousands per year. We base this estimate on the current number of businesses pursuing similar levels of financing through alternate capital raising methods: small business loans, reward-based and donation-based crowdfunding and Regulation D offerings. According to the SBA's fiscal year 2011 annual performance report, 54,500 small businesses received funding in 2011 through SBA's main lending programs, 7(a) and 504 loans.[877] A crowdfunding industry report estimates that there were 430,920 donation-based or reward-based campaigns in the U.S., which we estimate were conducted by 181,440 unique issuers.[878] Finally, a large number of Regulation D offerings are within the offer limits established for crowdfunding under Section 4(a)(6). According to filings made with the Commission, from 2009 to 2012, there were 25,274 new Regulation D offerings with offer sizes of $1 million or less. These offerings involved 19,652 unique issuers. When excluding hedge funds and investment companies, entities that generally would not be eligible to raise capital in reliance on the exemption in Section 4(a)(6),[879] the number of unique issuers was 15,616. Among these issuers, 24% reported no revenue, while approximately 20% had revenues of less than $1 million.[880] Approximately 92% of these issuers were organized as either a corporation or a limited liability company.

It is expected that many future issuers of securities in crowdfunding offerings would have otherwise raised capital from one of these alternative sources of financing, while others would have been financed by friends and family or not financed at all. Hence, while the total number of businesses using these alternative funding sources provides a basis for the potential number of issuers offering and selling securities in reliance on Section 4(a)(6) in the future, we cannot know how many of these businesses would elect securities-based crowdfunding in reliance on Section 4(a)(6) once it becomes available, nor can we know how many future businesses may not be financed at all. Further, SBA loan programs and other government contracting programs classify ''small businesses'' as those with fewer than 500 employees,[881] and we expect that some of these businesses might be too large for crowdfunding in reliance on Section 4(a)(6) to be an effective capital-raising option. Separately, many of the current rewards-based or donations-based crowdfunding projects likely entail applications that may not be suitable to a long-lived security issuance (*e.g.,* certain artistic endeavors or artistic projects). Nevertheless, these data show that the potential number of businesses that might seek to offer and sell securities in reliance on Section 4(a)(6) is large, particularly when compared to the current number of Exchange Act reporting issuers, which is less than 10,000.[882]

We believe that many potential issuers of securities through crowdfunding would be startups and small businesses that are close to the

[873] *See* Rajshree Agarwal and Michael Gort, *Firm and Product Life Cycles and Firm Survival,* 92 Am. Econ. Rev. 184 – 190 (2002) (''Agarwal'').

[874] *See* U.S. Department of Commerce, United States Census Bureau, *Business Dynamics Statistics, Data: Firm Characteristics* (2011), *available at http://www.census.gov/ces/dataproducts/bds/data_firm.html.*

[875] Small business loans are defined as loans secured by nonfarm nonresidential properties and commercial and business loans of $1,000,000 or less. *See* Federal Deposit Insurance Corporation, note 835.

[876] *See* National Venture Capital Association, *Recent Stats & Studies, available at http://www.nvca.org/index.php?option=com_content&view=article&id=344&Itemid=103.*

[877] *See 2011 Annual Performance Report,* note 844.

[878] The estimated number of campaigns is based on 532,000 successful fundraising campaigns in North America, 90% of which were in the U.S. and most of which (90%) were either rewards-based or donation-based. According to the industry report, 69% of issuers engaged in one to two campaigns, 26% in three to five campaigns and 5% in more than five campaigns. To estimate the number of unique issuers, we used the midpoint from the first two groupings and assumed that issuers in the third grouping engage in six campaigns. The number of unique issuers is thus estimated as follows: (90% × 90% × 532,000)/((69% × 1.5) + (26% × 4) + (5% × 6)) = 181,440. *See* Massolution, note 861.

[879] *See* discussion in Section II.A.3 above.

[880] These percentages could be higher because almost 45% of the Regulation D issuers declined to disclose their size.

[881] *See, e.g.,* 13 CFR 121.406(b) (a non-manufacturing business may qualify as a small business concern under Small Business Administration regulations, in part, if it does not exceed 500 employees); 7 CFR 3403.2 (defining small business concern under U.S. Department of Agriculture regulations, in part, as a concern that has not more than 500 employees).

[882] In fiscal year 2012, there were approximately 9,140 reporting companies. U.S. Securities and Exchange Commission, *FY 2014 Congressional Budget Justification, 2014 Annual Performance Plan, FY 2012 Annual Performance Report,* at 80, *available at http://www.sec.gov/about/reports/secfy14congbudgjust.pdf.*

''idea'' stage of the business venture and that have business plans that are not sufficiently well-developed or do not offer the profit potential or business model to attract VCs or angel investors that otherwise specialize in investing in high risk ventures. In this regard, a study of one large platform revealed that relatively few companies on that platform operate in technology sectors that typically attract VC investment activity.[883]

b. Crowdfunding Intermediaries

Section 4(a)(6)(C) requires that an offer and sale of securities in reliance on Section 4(a)(6) be conducted through a registered funding portal or a broker. Registered brokers, both those that are already registered with the Commission and those that would register, might wish to facilitate securities-based crowdfunding transactions. New entrants that do not wish to register as brokers might decide to register as funding portals to facilitate securities-based crowdfunding transactions in reliance on Section 4(a)(6). Donation-based or reward-based crowdfunding platforms with established customer relations might seek to leverage these relations and register as funding portals, or register as or associate with registered broker-dealers. Although the number of potential intermediaries that would fill these roles is uncertain, practices of existing brokers and crowdfunding platforms provide insight into how the market might develop.

As of December 2012, there were 4,450 broker-dealers registered with the Commission, with average total assets of approximately $1.1 billion per broker-dealer. The aggregate total assets of these registered broker-dealers are approximately $4.9 trillion. Of these registered broker-dealers, 410 also are dually registered as investment advisers.

Existing crowdfunding platforms are diverse and actively involved in financing, allowing thousands of projects to search for capital. A recent industry survey of crowdfunding platforms reports that 191 platforms were estimated to be operating in the U.S. as of 2012.[884] Additionally, based on 135 participants in the survey worldwide (including the U.S.), 15% of platforms were engaged in equity-based crowdfunding, 11% in lending-based crowdfunding, 27% in donation-based crowdfunding and 47% in reward-based crowdfunding.[885] Moreover, the industry survey stated that current crowdfunding portals typically charge entrepreneurs a listing fee that is based on how large the target amount is and/or upon reaching the target. According to the survey, fees from survey participants worldwide ranged from 2% to 25%, with an average of 7% in North America and Europe.[886]

We do not know at present which market participants would become intermediaries under Section 4(a)(6) after final rules are adopted, but we believe that existing crowdfunding platforms might seek to leverage their already-existing Internet-based platforms, brand recognition and user bases to facilitate offerings in reliance on Section 4(a)(6).[887] Industry participants have suggested that they expect three to four of the crowdfunding platforms that currently have the majority of market share in rewards-based and donation-based crowdfunding to obtain the majority of market share in the newly-developed securities-based crowdfunding market that relies on Section 4(a)(6).[888]

Under the statute and the proposed rules, funding portals are constrained in the services they could provide, and persons (or entities) seeking the ability to participate in activities unavailable to funding portals, such as offering investment advice or holding, managing, possessing or otherwise handling investor funds, would instead need to register as brokers or investment advisers, depending on their activities. Although we believe, based on conversation with industry participants, that initially, upon adoption of the final rules, more new registrants would register as funding portals than as broker-dealers, our conversations with industry participants [889] indicate that market competition to offer broker-dealer services as part of intermediaries' service capabilities might either drive more broker-dealer growth in the longer term or provide registered funding portals with the incentive to form long-term partnerships with registered broker-dealers. For example, crowdfunding platforms could have incentives to partner with broker-dealers because of broker-dealers' experience in providing recommendations or investment advice, as well as broker-dealers' access to investors.[890] There is anecdotal evidence that these partnerships are already forming under existing regulations, and one report predicted that in the first quarter of 2013, two to three dozen crowdfunding portals would partner with broker-dealers to start conducting private offerings under Regulation D in anticipation of securities-based crowdfunding.[891]

c. Investors

It is unclear what types of investors would participate in offerings made in reliance on Section 4(a)(6), but based on the profile of investors in the current domestic reward-based and donation-based crowdfunding market, we believe that many investors affected by the proposed rules would likely be individual retail investors who currently do not have broad access to investment opportunities in early-stage ventures, either because they do not have the necessary accreditation or sophistication to invest in most private offerings or because they do not have sufficient funds to participate as angel investors. Offerings made in reliance on Section 4(a)(6) might provide retail investors with additional investment opportunities, although the extent to which they invest in such offerings would likely depend on their view of the potential return on investment as well as the risk for fraud.

In contrast, larger, more sophisticated or well-funded investors may be less likely to invest in offerings made in reliance on Section 4(a)(6). The relatively low investment limits set by the statute for crowdfunding investors might make these offerings less attractive for professional investors, including VCs and angel investors.[892] While an offering made in reliance on Section 4(a)(6) could bring an issuer to the attention of these investors, it is possible that professional investors would prefer, instead, to invest in a

[883] *See* Ethan R. Mollick, *The Dynamics of Crowdfunding: An Exploratory Study* (Working Paper) (June 26, 2013), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2088298.*

[884] *See* Massolution, note 861 at 16.

[885] *Id.* at 17.

[886] *Id.* at 23.

[887] For example, a recent crowdfunding industry report suggests that funding portal reputation is important in the crowdfunding market, especially for equity-based crowdfunding. *See id.*

[888] For information on Commission staff discussions with industry participants, *see Meetings with SEC Officials, available at http://www.sec.gov/comments/jobs-title-iii/jobs-title-iii.shtml#meetings.*

[889] *Id.*

[890] *See* Mohana Ravindranath, *Crowdfunding platform ships product samples to potential investors,* Wash. Post, Nov. 29, 2012.

[891] *See* David Drake, *Rich Man's Crowd Funding,* Forbes, Jan. 15, 2013. *See also* Mohana Ravindranath, *Quickly adapting to crowdfunding laws, Wash. Post,* Sept. 7, 2012; J.J. Colao, *In the Crowdfunding Gold Rush, This Company Has a Rare Edge,* Forbes, June 5, 2013.

[892] An observer suggests that, unlike angels, VCs may be less interested in crowdfunding because, if VCs rely on crowdfunding sites for their deal flow, it would be difficult to justify charging a 2% management fee and 20% carried interest to their limited partners. *See* Ryan Caldbeck, *Crowdfunding—Why Angels, Venture Capitalists And Private Equity Investors All May Benefit,* Forbes, Aug. 7, 2013.

Rule 506 offering, which is not subject to the investment limitations applicable to offerings made in reliance on Section 4(a)(6).

d. Other Capital Providers, Broker-Dealers and Finders in Private Offerings

The proposed rules might affect the capital providers that currently finance small private businesses: small business lenders, VCs, family and friends and angel investors. The current scope of fundraising done by these capital providers is discussed above. As discussed below, the magnitude of the impact would depend on whether crowdfunding in reliance on Section 4(a)(6) emerges as a substitute or a complement to these financing sources.

In addition, issuers conducting private offerings might currently use broker-dealers to help them with various aspects of the offering and to help ensure compliance with the ban on general solicitation and advertising that exists for most private offerings. Private offerings also could involve finders who connect issuers with potential investors for a fee.[893] These private offering intermediaries also may be affected by the proposed rules because once these rules come into effect, issuers might no longer need the services of those broker-dealers and finders. Although we are unable to predict the exact size of the market for broker-dealers and finders in private offerings that are comparable to those that the proposed rules would permit,[894] data on the use of broker-dealers and finders in the Regulation D markets suggest that they may not currently play a large role in private offerings. Only 13% of all new Regulation D offerings from 2009 to 2012 used an intermediary such as a broker-dealer or a finder.[895] Approximately 11% of new offerings reported sales commissions greater than zero, while approximately 3% reported finder fees greater than zero. The use of a broker-dealer or a finder increased with offering size; they participated in 13% of offerings for up to $1 million and 18% of offerings for more than $50 million. Moreover, broker-dealer commissions and finder fees tend to decrease with offering size. Unlike the gross spreads in registered offerings, the differences in commissions for Regulation D offerings of different sizes are large: the average commission paid by issuers conducting offerings of up to $1 million (6.5%) is almost three times larger than the average commission paid by issuers conducting offerings of more than $50 million (1.9%). Similarly, the average finder's fee for offerings of up to $1 million is approximately 6.1%, compared to 1.4% for offerings of more than $50 million. We base these estimates, however, only on the Regulation D market. It is possible that issuers engaging in other types of private offerings (*e.g.,* those relying on Section 4(a)(2)), for which we do not have data, might use broker-dealers and finders more frequently and have different fee structures.

B. Analysis of Proposed Rules

As noted above, we are sensitive to the costs and benefits of the proposed rules, as well as the impact that the proposed rules would have on efficiency, competition and capital formation. In enacting Title III, Congress established a framework for a new type of exempt offering and required us to adopt rules to implement that framework. To the extent that crowdfunding rules are successfully utilized, the crowdfunding provisions of the JOBS Act should provide startups and small businesses with the means to raise relatively modest amounts of capital, from a broad cross section of potential investors, through securities offerings that are exempt from registration under the Securities Act. They also should permit small investors to participate in a wider range of securities offerings than may be available currently.[896] Specifically, the statutory provisions and the proposed rules address several challenges specific to financing startups and small businesses, including, for example, accessing a large number of potential investors, the regulatory requirements associated with issuing a security, protecting investors and making such securities offerings cost-effective for the issuer.

In the sections below, we analyze the costs and benefits associated with the proposed crowdfunding regulatory regime, as well as the potential impacts of such a regulatory regime on efficiency, competition and capital formation, in light of the background discussed above.

1. Broad Economic Considerations

In this release, we discuss costs and benefits that are related to the proposed rules. Many of these costs and benefits are difficult to quantify or estimate with any degree of certainty, especially considering that Section 4(a)(6) provides a new method for raising capital in the United States. Some costs are difficult to quantify or estimate because they represent transfers between various market participants. For instance, costs to issuers could be passed on to investors and costs to intermediaries could be passed on to issuers and investors. These difficulties in estimating and quantifying are exacerbated by the limited public data that indicates how issuers, intermediaries and investors would respond to these new investment opportunities.

The discussion below highlights several general areas where uncertainties regarding the new crowdfunding market might affect the potential costs and benefits of the proposed rules. It also highlights the potential effects on efficiency, competition and capital formation, as well as our ability to quantify relevant benefits and costs. In light of these uncertainties, we encourage commenters to provide data and analysis to help further quantify or estimate the potential benefits and costs of these proposed rules.

The extent to which the statute and the proposed rules would affect capital formation and the cost of capital to issuers depends in part on the issuers that choose to participate. In particular, if the offering exemption under Section 4(a)(6) only attracts issuers that are otherwise able to raise capital through alternative venues (*e.g.,* offerings relying on an exception from registration under Securities Act Section 3(a)(11), Securities Act Section 4(a)(2), Regulation A or Regulation D), the statute and the proposed rules could result in a redistribution of capital flow, which would enhance allocative efficiency but have a limited impact on the aggregate level of capital formation.[897] In addition, the degree to which the proposed rules would affect capital formation depends on the implementation of other provisions of the JOBS Act that may alter existing options for small companies to raise

[893] Depending on their activities, these persons may need to be registered as broker-dealers.

[894] *See* The Task Force on Private Placement Broker-Dealers, ABA Section of Business Law, *Report and Recommendations of the Task Force on Private Placement Broker-Dealers,* 60 Bus. Law. 959, 969–70 (2005) (''Task Force on Private Placement Broker-Dealers'').

[895] *See Ivanov/Bauguess Study,* note 816.

[896] *See, e.g.,* 158 Cong. Rec. S1781 (daily ed. Mar. 19, 2012) (statement of Sen. Carl Levin) (''Right now, the rules generally prohibit a company from raising very small amounts from ordinary investors without significant costs.'').

[897] For example, a recent GAO report on Regulation A offerings suggests that a significant decline in the use of this funding alternative after 1997 could be partially attributed to a shift in offerings to Rule 506 offerings under Regulation D, as a result of the preemption of state securities laws for Rule 506 offerings that occurred in 1996. *See* GAO Report, note 824.

capital. For example, Title II allows issuers relying on the exemption in Securities Act Rule 506(c) to use general solicitation and general advertising, while Title IV envisions a modified Regulation A offering exemption with a higher dollar limit.

Notwithstanding these alternatives, we believe that the Section 4(a)(6) offering exemption would likely represent a new source of capital for many issuers that currently have difficulty raising capital and that would continue to have difficulty raising capital when other JOBS Act provisions are implemented. Startups and small businesses usually have smaller and more variable cash flows than larger more established companies, and internal financing from their own business operations tends to be limited and unstable. Moreover, these businesses tend to have smaller asset bases [898] and, thus, less collateral for traditional bank loans. Startups and small businesses, which are widely viewed to have more financial constraints than publicly-traded companies and large private companies, could therefore benefit significantly from a securities-based crowdfunding market. We believe that the statute, as it would be implemented by the proposed rules, could increase both capital formation and the efficiency of capital allocation. The extent to which such issuers would use the Section 4(a)(6) offering exemption, however, is difficult to assess.

If startups and small businesses find alternative capital raising options more attractive than securities-based crowdfunding, the impact of Section 4(a)(6) on capital formation could be limited. Even so, the availability of securities-based crowdfunding as a financing option could increase competition among suppliers of capital, resulting in a potentially lower cost of capital for all issuers, including those that choose not to use securities-based crowdfunding.

For issuers that pursue offerings in reliance on Section 4(a)(6), establishing an initial price might be challenging. Although the statute requires certain issuer disclosures and the proposed rules are intended to help investors evaluate the viability of the issuer and the initial offering, these disclosures may be insufficient for investors to determine an appropriate price since there would be no underwriter of the offering and the issuer may not otherwise be skilled in valuation. It is not clear, therefore, how an initial offering price would be reached for many of the securities offered, nor how investors would be protected against poor initial valuations.[899] These potential difficulties might limit investor participation in offerings made in reliance on Section 4(a)(6) and mitigate some of the associated benefits of capital formation.

Uncertainty surrounding exit strategies for investors in crowdfunding offerings also might limit the benefits. In particular, it is unlikely that purchasers in crowdfunding transactions would be able to follow the typical path to liquidity that investors in other exempt offerings follow. For instance, investors in a VC-backed startup might eventually sell their securities in an initial public offering on a national securities exchange or to another company in an acquisition.[900] We anticipate that most businesses engaging in offerings in reliance on Section 4(a)(6) are unlikely to progress directly to an initial public offering on a national securities exchange given their small size,[901] and investors might lack adequate strategies or opportunities to eventually divest their holdings.[902] A sale of the business would require the issuer to have a track record in order to attract investors with the capital willing to buy the business. Moreover, the likely broad geographical dispersion of crowdfunding investors might make shareholder coordination difficult, although the electronic means may mitigate any difficulties. Even if an issuer could execute a sale or otherwise offer to buy back or retire the securities, it might be difficult for investors to determine whether the issuer was offering a fair market price. These uncertainties might limit the use of the Section 4(a)(6) exemption.

The potential benefits of the proposed rules also might depend on how investors respond to potential liquidity issues unique to the securities-based crowdfunding market. It is currently unclear how securities offered and sold in reliance on Section 4(a)(6) would be transferred in the secondary market after the one-year restricted period ends, and investors who purchased securities in reliance on Section 4(a)(6) and who seek to divest their securities would be unlikely to find a liquid market.[903] Shares might migrate to the over-the-counter market or to trading platforms that trade shares of private companies.[904] It is possible that secondary trading costs for investors might be substantial, effective and quoted spreads might be wide, and price volatility might be high compared to those of listed securities.[905] Illiquidity is a concern for other exempt offerings and small registered offerings. However, because investors purchasing securities in reliance on Section 4(a)(6) might be less sophisticated than investors in other private offerings due to the fact

[898] *See, e.g.,* John Asker, Joan Farre-Mensa and Alexander Ljungqvist, *Corporate Investment and Stock Market Listing: A Puzzle?* (European Corporate Governance Institute Finance Working Paper, June 2012), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1603484.*

[899] There also is a chance that valuations that emerge are inaccurate. For example, there is vast literature documenting that, on average, IPOs are significantly underpriced relative to their initial prices on the secondary market. For a review of the theory and evidence of IPO underpricing, *see* Jay Ritter and Ivo Welch, *A Review of IPO Activity, Pricing, and Allocations,* 57 J. Fin. 1795–1828 (2002). *See also* Ivo Welch, *Sequential Sales, Learning, and Cascades,* 47 J. Fin. 695–732 (1992) (analyzing the risk of herding among investors when shares are sold sequentially).

[900] *See* Gompers, note 830.

[901] As noted, under the statute and the proposed rules, businesses relying on Section 4(a)(6) would be limited to raising an aggregate of $1 million during a 12-month period. By contrast, as noted in the IPO Task Force report, the size of an initial public offering generally exceeds $50 million. *See* IPO Task Force, note 818.

[902] In contrast, given the required qualifications and capital amount limits, Regulation D offerings may generally attract issuers that are more knowledgeable and better capitalized. Moreover, such offerings are likely to have a larger proportion of accredited investors because, in contrast to securities-based crowdfunding, there are no limitations on individual investment amounts. As a result, we believe that Regulation D issuers and investors are more likely to have potential exit strategies in place.

[903] Academic studies have shown that the over-the-counter market is less liquid than the national exchanges. *See* Christie, *Market Microstructure of the Pink Sheets,* 33 J. Banking & Fin. 1,326–1,339 (2009); Andrew Ang, Assaf Shtauber and Paul Tetlock, *Asset Pricing in the Dark:* The Cross Section of OTC Stocks, Rev. Fin. Stud. (forthcoming).

[904] Given the services that funding portals are permitted to provide under the statute and the proposed rules, investors would not be able to use funding portals to trade in securities offered and sold in reliance on Section 4(a)(6) in a secondary market.

[905] Academic studies show that reducing the information transparency about an issuer increases the effective and quoted spreads of its shares, reduces share price and increases price volatility. Specifically, percentage spreads triple and volatility doubles when NYSE issuers are delisted to the Pink Sheets. *See* Jonathan Macey, Maureen O'Hara and David Pompilio, *Down and Out in the Stock Market: The Law and Finance of the Delisting Process,* 51 J.L. & Econ 683–713 (2008). When NASDAQ issuers delist and subsequently trade on the OTC Bulletin Board and/or the Pink Sheets, share volume declines by two-thirds, quoted spreads more than double, effective spreads triple and volatility triples. *See* Jeffrey H. Harris, Venkatesh Panchapagesan and Ingrid M. Werner, *Off But Not Gone: A Study of NASDAQ Delistings,* Fisher College of Business Working Paper No. 2008–03–005 and Dice Center Working Paper No. 2008–6 (Mar. 4, 2008), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=628203.* One factor that may alleviate transparency concerns is the fact that issuers that sold securities in an offering made in reliance on Section 4(a)(6) would have an ongoing reporting obligation, so disclosure of information about the issuer would continue to be required.

that there would be no investor qualification requirements, we expect that they would face additional challenges in addressing the impact of illiquidity, either in finding a suitable trading venue or negotiating with the issuer for an alternative retirement provision. The potentially high degree of illiquidity associated with securities purchased in reliance on Section 4(a)(6) might prevent investors from investing in businesses through such offerings, thus limiting potential capital formation.

Even with the mandated disclosures, unsophisticated investors purchasing securities issued in reliance on Section 4(a)(6) also may face certain expropriation risks, potentially limiting the upside of their investment, even when they select investments in successful ventures. This could occur if issuers issue securities with certain features (*e.g.,* callable securities or securities with differential control rights) or have insider-only financing rounds or financing rounds at reduced prices (the so-called ''down rounds'') that could have the effect of diluting an investor's interest or otherwise diminishing the value of the securities offered and sold in reliance on Section 4(a)(6). Investors purchasing securities issued in reliance on Section 4(a)(6) might not have the experience or the market power to negotiate various anti-dilution provisions, right of first refusal, tag-along rights, superior liquidation preferences and rights upon a change in control that have been developed by institutional and angel investors as protections against fundamental changes in a business.[906] If these or similar types of protections are absent, the expropriation risk could discourage some potential investors from participating in offerings made in reliance on Section 4(a)(6), potentially hindering efficiency, competition and capital formation.

The proposed rules also might have an effect on broker-dealers and finders participating in private offerings. Some issuers that previously relied on broker-dealers and finders to assist with raising capital through private offerings may, instead, begin to rely on the Section 4(a)(6) exemption to find potential investors. The precise impact of the proposed rules on these intermediaries would depend on whether (and, if so, to what extent) issuers switch from using existing exemptions to using the exemption provided by Section 4(a)(6) or whether the proposed rules primarily attract new issuers. If a significant number of issuers switch from raising capital under existing private offering exemptions to relying on the exemption provided by Section 4(a)(6), this likely would negatively affect the revenue of finders in the market for private offerings, while intermediaries under Section 4(a)(6) likely would gain from the potential losses in revenue that finders may face. This may disadvantage finders, but competition may ultimately lead to more efficient allocation of capital.

Using information from the Regulation D market allows us to quantify at least some of these potential losses. For example, from 2009 to 2012, the estimated cumulative dollar amount of finder fees charged for Regulation D offerings of up to $1 million was approximately $18 million, covering 437 offerings.[907] In a similar vein, from 2009 to 2012, the estimated cumulative dollar amount of commissions charged by broker-dealers for Regulation D offerings of up to $1 million was approximately $76.6 million, covering 1,480 offerings.[908] Thus, to the extent that issuers rely on Section 4(a)(6) to offer and sell securities in lieu of relying on Regulation D, the dollar amount of commissions and finder fees generated would be reduced, unless broker-dealers and finders provide new services that such issuers are willing to pay. For example, under the statute, broker-dealers would be able to operate portals. If securities-based crowdfunding primarily attracts new issuers to the market, the impact on broker-dealers and finder revenue could be negligible and the proposed rules may even have a positive effect on their revenues by revealing more potential clients for them. Additionally, greater investor interest in private company investment might increase capital formation, creating new opportunities for broker-dealers and finders that otherwise would have been unavailable.

Rules implementing Section 4(a)(6) also could encourage current participants in the securities-based crowdfunding market to diversify their funding models to attract a broader group of issuers and to provide additional investment opportunities for investors. For example, donation-based crowdfunding platforms that currently offer investment opportunities in micro-loans generally do not permit donors to collect interest on their investments because of concerns that this activity would implicate the federal securities laws unless an exemption from registration is available.[909] Under the proposed rules, these platforms might choose to permit businesses to offer securities that would provide investors with the opportunity to obtain a return on investment. This could broaden their user base and attract a group of investors different from those already participating in reward-based or donation-based crowdfunding. It is likely that some registered broker-dealers will find it profitable to enter the securities-based crowdfunding market and operate funding portals as well. Such an entry will increase the competition among intermediaries and likely lead to lower costs for issuers.

However, many projects that are well suited for reward-based or donation-based crowdfunding (*e.g.,* because they have finite lives, their payoffs to investors could come before the project is completed, they could be contingent on the project's success, etc.) may have little in common with startups and small businesses that are well suited for an offering in reliance on Section 4(a)(6). As a result, diversification among existing platforms might not always be optimal or preferred, particularly if complying with the proposed rules proves disproportionately costly compared to the amount of potential capital to be raised.

2. Crowdfunding Exemption

a. Limitation on Capital Raised

The statute imposes certain limitations on the total amount of securities that may be sold by an issuer during the 12-month period preceding the date of the transaction made in reliance on Section 4(a)(6). Specifically, Section 4(a)(6)(A) provides for a maximum aggregate amount of $1 million sold in reliance on the exemption during the 12-month period.[910]

The limitation on the amount that may be raised could benefit investors by reducing the potential for dilution or fraud. However, we recognize that the cap on the maximum amount that may be sold in reliance on Section 4(a)(6) also could prevent certain issuers from raising all the capital they need to make

[906] *See* Kaplan, note 858.

[907] We use data from new Form D filings and include in the analysis only filings with an offer amount greater than zero. We also exclude indefinite offerings because, for those, we cannot determine the offer size.

[908] Since we do not have data on broker-dealer and finder participation in other types of private offerings (*e.g.,* Section 4(a)(2) offerings), it is possible that the impact of crowdfunding in those offerings could be different than the impact on broker-dealers and finders in Regulation D offerings.

[909] *See, e.g., Deutsche Bank Microcredit Development Fund, Inc.,* SEC No-Action Letter (Apr. 8, 2012).

[910] *See also* proposed Rule 100(a)(1) of Regulation Crowdfunding.

their businesses viable, which in turn could result in lost opportunities. It also is likely to reduce efficiency to the extent that resources cannot be channeled to productive use. Due to the lack of data, however, we are not able to quantify the size of the efficiency loss. We are proposing, however, to allow issuers to conduct other exempt offerings that would not necessarily be integrated with the offering made in reliance on Section 4(a)(6), as long as the issuer satisfies the requirements of the exemption relied upon for the particular offering. We could have selected an alternative that would have aggregated the amounts offered in reliance on Section 4(a)(6) with the amounts offered pursuant to other exempt offerings. Under such an alternative, the amounts raised in other exempt offerings would count toward the maximum offering amount under Section 4(a)(6). Compared to this alternative, the ability of issuers to conduct other exempt offerings that would not count toward the maximum offering amount under Section 4(a)(6) might alleviate some of the concerns that certain issuers would not be able to raise sufficient capital.

b. Investment Limitations

The statute and the proposed rules also impose certain limitations on the aggregate dollar amount of securities that may be sold to any investor in reliance on Section 4(a)(6) during the preceding 12 months.[911] These provisions would cap the potential investment and, consequently, the potential losses for any single investor. Offerings made in reliance on Section 4(a)(6) would not be subject to review by Commission staff prior to the sale of securities, but the aggregate investment limits would provide some measure of protection for investors.

We recognize that the investment caps would limit the potential upside for investors. This might particularly affect the decisions of those with large portfolios who might be able to absorb losses and understand the risks associated with risky investments. For these investors, the $100,000 aggregate cap might limit their incentive to participate in the securities-based crowdfunding market, compared to other types of investments, potentially depriving the securities-based crowdfunding market of more experienced and knowledgeable investors and possibly impeding capital formation. Limiting the participation of such investors would be likely to negatively affect the informational efficiency of the securities-based crowdfunding market because sophisticated investors are better able to accurately price such offerings. These investors also could add value to the discussions taking place through an intermediary's communication channels about a potential offering by providing their views on financial viability.

The aggregate cap on investments also could limit the ability of investors to diversify within the securities-based crowdfunding market. As securities-based crowdfunding investments might have inherently high failure rates,[912] investors who do not diversify their investments across a number of offerings could face an increased risk of incurring large losses, relative to their investments, even when they investigate offerings thoroughly. By comparison, VC firms typically construct highly diversified portfolios with the understanding that many ventures fail, resulting in a complete loss of some investments, but with the expectation that those losses will be offset by the large upside of the relatively fewer investments that succeed.[913] The securities-based crowdfunding market is expected to involve earlier-stage financing compared to venture capital financing, and therefore, the chances of investment success may be lower.[914] The statutory thresholds for overall securities-based crowdfunding investments under Section 4(a)(6) might limit an investor's ability to choose a sufficiently large number of investments to offset this risk and to recover the due diligence costs of sufficiently investigating individual investments. One potential solution to this diversification problem would be to invest smaller amounts in more ventures. The drawback is that the costs associated with identifying and reviewing investment opportunities are, to a large extent, fixed.

c. Issuer Eligibility

The statute and the proposed rules exclude certain categories of issuers from eligibility to rely on Section 4(a)(6) to engage in crowdfunding transactions.[915] We are proposing to exclude three additional categories of issuers, beyond those identified in the statute, from being eligible to rely on Section 4(a)(6) to engage in crowdfunding transactions. First, we propose to exclude issuers that would be disqualified from relying on Section 4(a)(6) pursuant to the disqualification provisions of Section 302(d) of the JOBS Act.[916] Second, we propose to exclude issuers that sold securities in reliance on Section 4(a)(6) and have not filed with the Commission and provided to investors the ongoing annual reports required by Regulation Crowdfunding during the two years immediately preceding the filing of the required offering statement.[917] This additional exclusion would not impose any additional burdens and costs on an issuer that the issuer would not have already incurred had it complied with the ongoing reporting requirements as they came due. Further, the requirement that a delinquent issuer prepare two annual reports at one time should provide updated and current information to investors without requiring an issuer to become current in its reporting obligations. As a result, we believe that this exclusion would incentivize issuers to comply with its ongoing reporting requirements, if they intend to rely again on Section 4(a)(6) to raise additional capital, which would allow investors to make more informed investment decisions. We also recognize that conditioning an issuer's Section 4(a)(6) eligibility on the requirement that issuers provide ongoing reports for only the previous two-years may deprive investors of information in some periods that might otherwise have negative effects on the price formation and liquidity of the securities in the secondary market. The potential damage to an issuer's reputation resulting from being delinquent, however, may provide the issuer with sufficient incentive to consistently comply with the ongoing reporting requirements.

Third, we propose to exclude a company that has no specific business plan or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies. This proposed ineligibility requirement will have only a marginal effect on issuer participation and capital formation because the startups and small businesses seeking the exemption would generally have, even in the early stage of their development, a business plan specific enough to distinctly differentiate them from companies with no specific business plan.

[911] *See* Section 4(a)(6)(B). *See also* proposed Rule 100(a)(2) of Regulation Crowdfunding.

[912] *See* discussion in Section III.A.3 above.

[913] *See* John Cochrane, *The Risk and Return of Venture Capital,* 75 J. of Fin. Econ. 3 (2005).

[914] *See* Agarwal, note 873.

[915] *See* Section 4A(f). *See also* proposed Rule 100(b) of Regulation Crowdfunding.

[916] *See* proposed Rule 100(b)(4) of Regulation Crowdfunding.

[917] *See* discussion in Section II.A.4 above.

3. Issuer Requirements

We recognize that there are benefits and costs associated with the statutory requirements and the proposed rules, including the disclosure requirements, pertaining to issuers. While the estimated costs to issuers are discussed in further detail elsewhere in this section, the following table summarizes these costs:

	Offerings of $100,000 or less	Offerings of more than $100,000, but not more than $500,000	Offerings of more than $500,000
Compensation to the intermediary [918]	$2,500–7,500	$15,000–45,000	$37,500–112,500
Costs per issuer for obtaining EDGAR access codes on Form ID [919]	60	60	60
Costs per issuer for preparation and filing of Form C for each offering [920]	6,000	6,000	6,000
Costs per issuer for preparation and filing of the progress updates on Form C–U [921]	400	400	400
Costs per issuer for preparation and filing of annual report on Form C–AR [922]	4,000	4,000	4,000
Costs for annual review or audit of financial statements per issuer [923]	Not required	14,350	28,700
Costs per issuer for preparation and filing of Form C–TR to terminate reporting [924]	600	600	600

a. General Disclosure Requirements

The statute and the proposed rules related to issuer disclosures are intended to reduce the information asymmetries that currently exist between small businesses and potential investors. Small private businesses typically do not disclose information as frequently or as extensively as public companies, if at all. Moreover, unlike public companies, small private businesses are not required to hire an independent third party to validate the information disclosed. When information about a company is difficult to obtain or the quality of the information is uncertain, investors are at risk of making poorly-informed investment decisions regarding that company.

Such information asymmetries might be especially acute in the securities-based crowdfunding market because the market includes startups and small businesses that have significant risk factors and that might have characteristics that have led them to be rejected by other potential funding sources, including banks, VCs and angel investors. In addition, the securities-based crowdfunding market may attract unsophisticated retail investors who may not have the resources necessary to effectively monitor issuers. For instance, some issuers might use capital to fund riskier projects than what was disclosed to investors, or they might not make best efforts to achieve their stated business objectives. If investors in securities-based crowdfunding are unable to monitor such issuers because of limited information or credible third-party validation of this information, they might eventually seek higher yields or choose to withdraw from the securities-based crowdfunding market altogether, thus increasing the cost of capital to issuers and impeding capital formation. In addition, investors in offerings made in reliance on Section 4(a)(6) might make relatively small investments. The potential dispersed investor base may make it difficult for investors to solve collective action problems.

The statute and the proposed rules seek to reduce information asymmetries by requiring issuers to file specified disclosures with the Commission for offerings made in reliance on Section 4(a)(6) on the offer date and on an annual basis thereafter.[925] Issuers also would be required to provide these disclosures to investors, and in the case of offering documents, to potential investors and the relevant broker or funding portal. The proposed disclosure requirements described above [926] are more extensive than those required under existing offering exemptions. For example, although the current requirements under Regulation A require similar initial financial disclosures, they do not require periodic reporting.[927] Issuers using the Rule 504 exemption under Regulation D to raise up to $1 million do not need to provide audited financial statements and there are no periodic disclosure requirements. Regulation D offerings under Rules 505 and 506 for up to $2 million require issuers to provide audited current balance sheets to non-accredited

[918] *See* discussion in Section III.B.4 below. For purposes of the table, we estimate the range of compensation that an issuer would pay the intermediary assuming the following: (1) The compensation would be calculated as a percentage of the offering amount ranging from 5% to 15% of the total offering amount; and (2) the issuer is offering $50,000, $300,000 and $750,000, which are the mid-points of the offering amounts under each of the respective columns. The compensation paid to the intermediary may, or may not, cover services to an issuer in connection with the preparation and filing of the proposed filings identified in this table.

[919] *See* Section IV.C.1.d below for a discussion of the hourly burdens for obtaining EDGAR access codes on Form ID. We estimate, for purposes of the Paperwork Reduction Act, the cost of outside counsel at a rate of $400 an hour. We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional service and that many small issuers are likely to face substantially lower costs. Small issuers also may choose to prepare the proposed forms without seeking the assistance of outside counsel. The table shows only those costs we attribute to outside professionals, for purposes of this analysis, as we believe internal costs would vary greatly among issuers.

[920] *See* proposed Rule 203(a)(1) of Regulation Crowdfunding. *See also* Section IV.C.1.a below for a discussion of the hourly burdens for preparing and filing Form C for each offering. For purposes of the table, we estimate that 25 percent of the hourly burden would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.

[921] *See* proposed Rule 203(a)(3) of Regulation Crowdfunding. *See also* Section IV.C.1.a below for a discussion of the hourly burdens for preparing and filing the progress updates on Form C–U. For purposes of the table, we estimate that the hourly burden would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.

[922] *See* proposed Rule 203(b)(1) of Regulation Crowdfunding. *See also* Section IV.C.1.b below for a discussion of the hourly burdens for preparing and filing each annual report on Form C–AR. For purposes of the table, we estimate that 25 percent of the hourly burden would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.

[923] *See* proposed Rule 201(t) of Regulation Crowdfunding. *See also* Section II.B.1.a.ii above.

[924] *See* proposed Rule 203(b)(2) of Regulation Crowdfunding. *See also* Section IV.C.1.c below for a discussion of the hourly burdens for preparing and filing Form C–TR. For purposes of the table, we estimate that the hourly burden would be carried by outside professionals retained by the issuer at an average cost of $400 per hour.

[925] *See* Section 4A(b). *See also* proposed Rules 201, 202 and 203 of Regulation Crowdfunding.

[926] *See* Section II.B.1 above.

[927] Securities Act Rule 257 (17 CFR 230.257), however, requires issuers conducting offerings pursuant to Regulation A to file Form 2–A (17 CFR 239.91) with the Commission at certain intervals to report sales and the use of proceeds until termination, completion or final sale of securities in the offering or until the proceeds have been applied, whichever is later.

investors (and unaudited statements of income, cash flows and changes in stockholders' equity), but there are no periodic reporting requirements. The disclosure requirements in the proposed rules should benefit investors by enabling them to better evaluate the issuer and the offering, monitor how the issuer is doing over time and be aware of when the issuer may terminate its ongoing reporting obligations. This would allow investors with various risk preferences to invest in the offerings best suited for their risk tolerance, thus improving allocative efficiency.

The disclosure requirements also could improve informational efficiency in the market. Specifically, the required disclosure would provide investors with a useful benchmark to evaluate other private issuers both within and outside of the securities-based crowdfunding market.[928] Additionally, disclosure by issuers engaging in crowdfunding transactions in reliance on Section 4(a)(6) could inform financial markets more generally by providing information about new consumer trends and new products, thus creating externalities that benefit other types of investors and issuers.

We recognize, however, that the proposed disclosure requirements also would have associated limitations and costs, including the direct costs of preparation, certification (when necessary) and dissemination of the disclosure documents. We note that, under the statute, the disclosure requirements for offerings made in reliance on Section 4(a)(6) are more extensive, in terms of breadth and frequency, than those for other private offerings. The statute also provides us with the discretion to impose additional requirements on issuers engaging in crowdfunding transactions, and in some cases, the proposed rules would require issuers to disclose information in addition to the information specifically listed in the statute.[929] For example, we are proposing to require disclosure of any indebtedness of the issuer[930] because we believe that servicing debt could place additional pressures on a company in the early stages of development and this information would be important to investors. The proposed rules also would require disclosure of any prior securities-based crowdfunding or other exempt offerings conducted within the past three years.[931] In some cases, an issuer might have previously engaged in crowdfunding in reliance on Section 4(a)(6) and may be returning for additional funding. We believe that it would be important to investors to know whether the prior securities-based crowdfunding or other offerings of securities were successful, and if so, the amount raised in these prior offerings. Compared to the disclosure requirements under existing private offering exemptions, this information would better inform investors about the capital structure of an issuer, might provide insight into how prior offerings were valued and could enable investors to more fully assess the issuer and the potential risks associated with the current offering.

We recognize that the additional information required by the discretionary requirements would increase the disclosure costs to issuers, but we believe that this would improve investor decision-making and ultimately benefit issuers with viable investment opportunities by improving price efficiency in the securities-based crowdfunding market. Although we recognize that requiring less disclosure would impose lower compliance costs, we believe that the additional disclosure requirements we are proposing strike the appropriate balance between enhancing the ability of issuers relying on Section 4(a)(6) to raise capital and enabling investors to make informed investment decisions. Additionally, disclosure might have indirect costs to the extent that information disclosed by issuers relying on Section 4(a)(6) could be used by their competitors. Requiring significant levels of disclosure at an early stage of an issuer's lifecycle might affect an issuer's competitive position and might limit the use of the exemption in Section 4(a)(6) by issuers who are especially concerned with confidentiality. It also is possible that these disclosure costs would make other types of private offerings more attractive to potential securities-based crowdfunding issuers. For example, the recent changes to Rule 506 of Regulation D,[932] which allow for general solicitation, subject to certain conditions, are likely to increase its attractiveness and, thus, may divert potential issuers from crowdfunding.

In addition, under the statute and the proposed rules, issuers that complete a crowdfunding transaction in reliance on Section 4(a)(6) would be subject to ongoing reporting requirements,[933] which are not required under other private offering exemptions and which might increase compliance costs. The ongoing reporting, however, might provide a liquidity benefit for secondary sales of the issuers' securities.

b. Financial Condition and Financial Statement Disclosure Requirements

With respect to the statutory requirement to provide disclosure about the issuer's financial condition, the proposed rules would require narrative disclosure addressing the issuer's historical results of operations, in addition to information about its liquidity and capital resources.[934] We expect that this discussion would inform investors about the financial condition of the issuer, without imposing significant costs, because the issuer should already have such information readily available. In addition, the proposed rules would not prescribe the content or format for this information.

With respect to the requirement to provide financial statements, the proposed rules would implement the tiered financial disclosure requirements specified by the statute, which are based on the aggregate amount of securities offered and sold during the preceding 12-month period, inclusive of the offering amount in the offering for which disclosure is being provided.[935] Although the disclosure requirements would provide investors with more information than might otherwise be obtained in private offerings, the disclosures might create additional costs for those issuers who have limited financial and accounting expertise necessary to produce the financial disclosures envisioned by the statute and the proposed rules. In this respect, the statute anticipates a level of development among issuers that might not be present in the relevant securities-based crowdfunding market. For instance, a startup with a promising business idea might have little capital prior to the offering, leaving limited amounts to be audited or certified. The issuer disclosures required for offerings made in reliance on Section 4(a)(6),

[928] *See* Christian Leuz and Peter Wysocki, *Economic Consequences of Financial Reporting and Disclosure Regulation: A Review and Suggestions for Future Research,* (Working Paper, University of Chicago) (2008), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105398.*

[929] *See* Section 4A(b)(5). *See also* Section II.B.1.a.i(g) for a description of the additional disclosure requirements.

[930] *See* proposed Rule 201(p) of Regulation Crowdfunding.

[931] *See* proposed Rule 201(q) of Regulation Crowdfunding.

[932] *See General Solicitation Adopting Release,* note 12.

[933] *See* Section 4A(b)(4). *See also* proposed Rule 202 of Regulation Crowdfunding.

[934] *See* proposed Rule 201(s) of Regulation Crowdfunding. *See also* Section II.B.1.a.ii(a) above.

[935] *See* proposed Rule 201(t) of Regulation Crowdfunding. *See also* Section II.B.1.a.ii(b) above.

therefore, might not always help investors with their investment decisions or may weigh against an issuer when a potential investor is deciding whether to make an investment.

The proposed rules would require all issuers to provide a complete set of their financial statements (a balance sheet, income statement, statement of cash flows and statement of changes in owners' equity) that are prepared in accordance with U.S. GAAP and cover the shorter of the two most recently completed fiscal years or the period since inception.[936] This proposed requirement may impose a cost on potential issuers, especially those smaller issuers that may have historically prepared their financial statements in accordance with other comprehensive bases of accounting, such as a cash basis of accounting or a tax basis of accounting, rather than U.S. GAAP. Investors, however, would benefit from the requirement that financial statements be prepared in accordance with U.S. GAAP, as U.S. GAAP is widely used and would allow for more comparability among issuers.

The proposed rules also specify that an issuer could conduct an offering in reliance on Section 4(a)(6) using financial statements for the fiscal year prior to the most recently completed fiscal year, provided that not more than 120 days have passed since the end of the issuer's most recently completed fiscal year, the issuer was not otherwise required to update the financial statements and updated financial statements are not otherwise available.[937] This might impose a cost on potential investors to the extent that the investors would not have the most recent information about the issuer's financial condition. However, this concern is somewhat mitigated by the proposed requirement that issuers include a discussion of changes in their financial condition since the period covered by the financial statements, including changes in revenue or net income and other relevant financial measures.[938]

Requiring financial statements covering the two most recently completed fiscal years, as proposed, would benefit investors by providing a basis for comparison against the most recently completed fiscal year and by allowing investors to identify changes in the development of the business. Compared to an alternative that we could have selected, that of requiring financial statements covering only the most recently completed fiscal year as one commenter suggested,[939] requiring a second year of financial statements might increase the cost for the issuer.[940] Also, to the extent that the issuer had no or little operations in the prior year, the benefit of comparability might not apply. In this regard, we recognize that many issuers might not have any financial history, and potential investors might make investment decisions without a track record of issuer performance, relying largely on the belief that an issuer can succeed based on the concept and other factors.

For offerings of $100,000 or less, the statute and the proposed rules would require the issuer to provide its filed income tax returns for the most recently completed year (if any) and financial statements that are certified by the principal executive officer to be true and complete in all material respects.[941] While providing an income tax return is not expected to impose a significant cost on issuers, it is not clear to what extent the information presented in a tax return would be useful for an investor evaluating whether or not to purchase securities from the issuer. Although the information might be limited, it would not be uninformative. Under the proposed rules, issuers would be required to redact personal information from the required tax returns.[942] We believe that this would alleviate privacy concerns, while still satisfying the statutory requirement to provide tax return information.

Moreover, the proposed rules would specify that if an issuer is offering securities in reliance on Section 4(a)(6) before filing a tax return for the most recently completed fiscal year, the issuer could use the tax return filed for the prior year, on the condition that the issuer provides the tax return for the most recent fiscal year when it is filed, if it is filed during the offering period.[943] This accommodation should benefit issuers by enabling them to engage in transactions during the time period between the end of their fiscal year and when they file their tax return for that year. This might impose a cost on potential investors because they might not receive the most up-to-date information about the issuer's financial condition. However, this concern is somewhat mitigated by the proposed requirement that issuers provide disclosure about material changes in their financial condition since the prior year.[944] In addition, we are proposing a form of certification for the principal executive officer to provide in the issuer's offering statement, which we believe would help issuers comply with the certification required by the statute and the proposed rules.[945]

For offerings of more than $100,000, but not more than $500,000, the proposed rules specify that the required financial statements must be reviewed in accordance with SSARS issued by the AICPA.[946] Although one alternative we could have selected is to develop a new review standard for purposes of these rules, we believe that issuers would benefit from a rule that requires the use of the AICPA's widely-utilized review standard, particularly in light of the fact that there are no other widely-utilized review standards from which to choose. We believe that many accountants reviewing financial statements of issuers raising capital in reliance on Section 4(a)(6) would be familiar with the AICPA's standards and procedures for review, which should help to lessen review costs.

For offerings of more than $500,000, the statute and the proposed rules would require that financial statements be audited.[947] The statute gives us discretion to change the threshold that would require audited financial statements, but we are not proposing to change it at this time. We believe that audited financial statements would benefit investors in offerings by issuers with substantive prior business activity by providing them with greater confidence in the quality of the financial statements of issuers seeking to raise larger amounts of capital. We also understand that requiring audited financial statements would increase the cost to issuers, and for issuers that are newly formed, with no or very limited operations, the benefit of the audit may not justify the cost of the audit. Compared to an alternative that we could have taken, that of a higher threshold (*e.g.,* offerings of more than $700,000) for providing audited financial statements, our approach in the proposed rules would likely result in more issuers having to provide audited financial statements, as well as

[936] *See* proposed Instruction 2 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[937] *See* proposed Instruction 8 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[938] *See* proposed Instruction 9 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[939] *See* CompTIA Letter.

[940] *But see* note 174.

[941] *See* Section 4A(b)(1)(D)(i). *See also* proposed Rule 201(t)(1) of Regulation Crowdfunding.

[942] *See* proposed Instruction 3 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[943] *Id.*

[944] *See* proposed Instruction 9 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[945] *See* proposed Instruction 4 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[946] *See* proposed Rule 201(t)(2) of Regulation Crowdfunding.

[947] *See* Section 4A(b)(1)(D)(iii). *See also* proposed Rule 201(t)(3) of Regulation Crowdfunding.

higher compliance costs for those issuers. Based on a compilation of data submitted to us by reporting companies, the average cost of an audit for an issuer with less than $1 million in market capitalization and less than $1 million in revenues is approximately $28,700.[948] We expect that the cost of an audit for many issuers engaging in a crowdfunding transaction in reliance on Section 4(a)(6) might be less, because they likely would be at an earlier stage of development than issuers that file Exchange Act reports with us and, thus, would be less complex to audit.

For offerings of more than $500,000, the proposed rules also would require financial statements to be audited in accordance with the auditing standards issued by either the AICPA or the PCAOB.[949] We believe that letting issuers choose the auditing standards could provide a number of benefits. If an issuer currently has financial statements audited under one of the specified standards, the issuer would not need to obtain a new audit or engage a different auditor to conduct an audit to engage in a crowdfunding transaction in reliance on Section 4(a)(6) and the proposed rules. If an issuer chooses to have an audit conducted in accordance with PCAOB auditing standards, it would not need to obtain a new audit to file a registration statement with the Commission for a registered offering. By not taking an alternative approach, that of requiring the audits to be conducted by PCAOB-registered firms, the proposed rules should allow for the eligibility of a greater number of accountants to audit the issuers' financial statements, and thereby, could reduce costs for crowdfunding issuers.

As described above, the statute and the proposed rules require some financial statements to be reviewed or audited by a public accountant. The proposed rules would specify that a public accountant must be independent of the issuer, in accordance with the independence standards set forth in Rule 2–01 of Regulation S–X.[950] The proposed requirement to comply with our independence standards may impose costs to the extent that there are higher costs associated with engaging an accountant that satisfies the independence standards. Also, the independence standards set forth in Rule 2–01 of Regulation S–X may impose higher costs than other independence standards, such as the AICPA independence standards.[951]

In addition, the proposed rules would require an issuer to file a review report or audit report, whichever is applicable.[952] This could impose an additional cost on issuers to the extent that the accountant or auditor increases the fee associated with the review or audit to compensate for any additional liability that may result.

c. Issuer Filing Requirements

The statute does not specify a format that issuers must use to present the required disclosures and file the disclosures with the Commission. As noted above, we are proposing to require issuers to file the mandated disclosure on EDGAR using new Form C.[953] Issuers would incur the cost to comply with the disclosure requirements and file the information in the new proposed Form C: Offering Statement and Form C–U: Progress Update before the offering was funded, thus imposing a cost on issuers regardless of whether their offerings were successful. In addition, issuers would incur the cost to comply with the ongoing reporting requirements and file information in the new proposed Form C–AR: Annual Report.[954]

Form C would require certain disclosures to be submitted using an XML-based filing,[955] while allowing the issuer to customize the presentation of other required disclosures. This proposed approach would provide issuers with the flexibility to present required disclosures in a cost-effective manner, while also requiring the disclosure of certain key offering information that would be collected in a standardized format, which we believe would benefit investors and help facilitate capital formation.

We expect that requiring certain disclosures to be submitted using XML-based filings would produce numerous benefits for issuers, investors and the Commission. For instance, using information filed pursuant to these proposed requirements, users of the information could readily track capital generated through crowdfunding offerings without requiring the manual inspection of each filing. The ability to efficiently collect information on all issuers also could provide an incentive for data aggregators or other market participants to offer services or analysis that investors could use to compare and choose among different offerings. For example, reporting key financial information using XML-based filings would allow investors, analysts and data aggregators to more easily compile, analyze and compare information regarding the capital structure and financial position of various issuers. XML-based filings also would provide the Commission with data about the use of the new exemption that would allow the Commission to evaluate whether the rules implementing the exemption include appropriate investor protections and whether the rules unduly restrict capital formation. In addition, requiring disclosure of the compensation paid to intermediaries would help inform the Commission, issuers and investors about the costs of raising capital in this market.

We expect that the cost of preparing and filing Form C could vary significantly among issuers. For example, issuers with little operating activity might have lower costs because they likely would have less to disclose than a more complex operation. Further, small issuers might choose to prepare and file Form C without seeking the assistance of outside counsel.[956] Thus, the Commission also expects that reporting costs for many small issuers may be insignificant.[957]

The proposed rules also would require that issuers file a Form C–U: Progress Update to describe the progress of the issuer in meeting the target offering amount.[958] The proposed rules would require the issuer to file two progress updates within five business

[948] *See* Audit Analytics, *Auditor-Fees, available at http://www.auditanalytics.com/0002/audit-data-company.php.* The auditor fee database contains fee data disclosed by Exchange Act reporting companies in electronic filings since January 1, 2001. For purposes of our calculation, we averaged the auditor fee data for companies with both market capitalization and revenues of less than $1 million (the smallest subgroup of companies for which data is compiled).

[949] *See* proposed Rule 201(t)(3) of Regulation Crowdfunding.

[950] *See* proposed Instruction 7 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[951] For example, under the independence standards set forth in Rule 2–01 of Regulation S–X, an auditor cannot provide bookkeeping services to an audit client, so an issuer would need to retain a different accountant to provide those services. *See* Rule 2–01(c)(4) of Regulation S–X [17 CFR 210.2–01(c)(4)].

[952] *See* proposed Instructions 5 and 6 to paragraph (t) of proposed Rule 201 of Regulation Crowdfunding.

[953] *See* proposed Rule 203(a) of Regulation Crowdfunding. *See also* Section II.B.3 above.

[954] *See* proposed Rule 203(b) of Regulation Crowdfunding. *See also* Section II.B.3 above.

[955] *See* proposed Instruction to paragraph (a)(1) of proposed Rule 203 of Regulation Crowdfunding. *See also* Section II.B.3 above.

[956] *See* Section IV.C.1. below.

[957] We estimate, for purposes of the Paperwork Reduction Act, that 25 percent of the 60 hours anticipated to prepare and file Form C could be performed by outside counsel at a rate of $400 an hour. *See* Section IV.C.1.a below. We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional service and that many small issuers are likely to face substantially lower costs.

[958] *See* proposed Rule 203(a)(3) of Regulation Crowdfunding. *See also* Sections II.B.1.b and II.B.3 above.

days from the day when the issuer reaches one-half and 100 percent of the target offering amount, as well as a final progress update within five business days after the end of the offering period if the issuer will accept proceeds in excess of the target offering amount. The Commission expects the costs of preparing these updates to vary but to be relatively small, given how little information is required.[959] However, if the size of the security-based crowdfunding market developed to a level commensurate with the current non-security-based crowdfunding market, this could result in tens of thousands of filings with the Commission each year. To the extent that this same progress information also would be available on the registered intermediary's Web site, as is already occurring with existing non-security-based offering platforms, then there might be little marginal benefit to these filings. For these reasons, we are seeking comment on alternative frequencies and manner of progress updates.

As noted above, the statute also requires an issuer to file and provide to investors information about the issuer's financial condition on at least an annual basis, as determined by the Commission.[960] To implement this statutory requirement, the proposed rules would require any issuer that sold securities in a crowdfunding transaction in reliance on Section 4(a)(6) to file annually with the Commission a new Form C–AR: Annual Report, no later than 120 days after the end of each fiscal year covered by the report.[961] We believe that annual reports would inform investors in their portfolio decisions and could enhance price efficiency. Moreover, as discussed above, under the statute and the proposed rules, the securities would be freely tradable after one year,[962] and therefore, this information also would benefit potential future holders of the issuer's securities by enabling them to update their assessments as new information was made available through the annual updates, potentially allowing for more efficient pricing. More generally, these proposed continued disclosures also might help facilitate the transfer of securities in secondary markets after the one-year restricted period ends, which could mitigate some of the potential liquidity issues that are unique to the securities-based crowdfunding market, discussed above.

Annual reporting requirements, however, would impose ongoing costs on issuers. The proposed rules would require that issuers continue to file Form C–AR: Annual Report until the earlier of the following: (1) The issuer becomes a reporting company required to file reports under Exchange Act Sections 13(a) or 15(d); (2) the issuer or another party repurchases all of the securities issued pursuant to Securities Act Section 4(a)(6), including any payment in full of debt securities or any complete redemption of redeemable securities; or (3) the issuer liquidates or dissolves its business in accordance with state law.[963] We estimate that the cost to prepare and file Form C–AR would be approximately two-thirds of the cost to prepare and file Form C: Offering Statement. Form C–AR requires similar disclosure as Form C. If an issuer undertakes multiple offerings, which individually require different levels of financial statements, the issuer would be required to provide financial statements that meet the highest standard previously provided. An issuer would not be required to provide the offering-specific information that was filed at the time of the offering, but the disclosure requirements would otherwise be the same as those required in connection with the offer and sale of the securities,[964] which should minimize the disclosure burden for issuers. Any issuer terminating its annual reporting obligations would be required to file a notice under cover of ''Form C–TR: Termination of Reporting'' to notify investors and the Commission that it would no longer file and provide annual reports pursuant to the requirements of Regulation Crowdfunding.[965] The Commission expects the costs of preparing these updates to vary significantly among issuers.[966]

d. Advertising—Notice of Offering

The statute and the proposed rules would prohibit an issuer from advertising the terms of the offering, except for notices that direct investors to an intermediary's platform.[967] The terms of the offering would include the amount offered, the nature of the securities, price of the securities and length of the offering period.[968] The proposed rules would allow an issuer to publish a notice about the terms of the offering made in reliance on Section 4(a)(6), subject to certain limitations on the content of the notice.[969] The notices would be similar to the ''tombstone ads'' permitted under Securities Act Rule 134,[970] except that the proposed rules would require the notices to direct potential investors to the intermediary's platform, through which the offering made in reliance on Section 4(a)(6) would be conducted.

We believe this approach would allow issuers to generate interest in offerings and to leverage the power of social media to attract potential investors. At the same time, we believe it also would protect potential investors by limiting the ability of issuers to provide certain advertising materials without also providing the disclosures, available on the intermediary's platform, that are required for an offering made in reliance on Section 4(a)(6). Moreover, this proposed requirement that limits the issuer's ability to advertise the terms of the offering, while directing investors to the intermediary's platform for more offering-specific information, would not impose costs to market participants.

e. Compensation of Persons Promoting the Offering

The statute and the proposed rules would prohibit an issuer from compensating, or committing to compensate, directly or indirectly, any person to promote the issuer's offering through communication channels provided by the intermediary unless the issuer takes reasonable steps to ensure that such person clearly discloses the receipt of such compensation (both past and prospective) each time a promotional communication is made.[971]

We believe that such requirement would benefit the securities-based crowdfunding market because it would allow investors to make better informed investment decisions. A premise of crowdfunding is that investors would rely, at least in part, on the collective wisdom of the crowd to make better informed investment decisions.

[959] *See* Section IV.C.1.a below.

[960] *See* Section 4A(b)(4).

[961] *See* proposed Rule 202 of Regulation Crowdfunding. *See also* Section II.B.2 above for a discussion of the disclosure requirements for Form C–AR.

[962] *See* Section 4A(e). *See also* proposed Rule 501 of Regulation Crowdfunding.

[963] *See* proposed Rule 202(b) of Regulation Crowdfunding.

[964] *See* proposed Rule 202(a) of Regulation Crowdfunding.

[965] *See* proposed Rule 203(b)(2) of Regulation Crowdfunding.

[966] Issuers would spend, on average, approximately 1.5 hours to complete this task. Again, we do not have the information necessary to provide a reasonable estimate of the costs associated with this time burden because these costs would vary significantly among small issuers and would depend, in part, on the stage of the issuer's development. *See* Section IV.C.1.c below.

[967] *See* Section 4A(b)(2). *See also* proposed Rule 204 of Regulation Crowdfunding.

[968] *See* proposed Instruction to proposed Rule 204 of Regulation Crowdfunding.

[969] *See* proposed Rule 204(b) of Regulation Crowdfunding. *See also* Section II.B.4 above.

[970] 17 CFR 230.134.

[971] *See* Section 4A(b)(3). *See also* proposed Rule 205 of Regulation Crowdfunding.

Accordingly, we propose to require intermediaries to provide communication channels for issuers and investors to exchange information about the issuer and its offering.[972] Although the requirement to take steps to ensure disclosure of compensation paid to persons promoting the offering would impose compliance costs for issuers, we believe that investors would benefit from knowing if the investment they are considering and discussing with other potential investors is being touted by a promoter who is compensated by the issuer.

f. Oversubscription and Offering Price

The proposed rules would permit an issuer to accept investments in excess of the target offering amount, subject to the $1 million limitation and certain conditions.[973] We believe that permitting oversubscriptions would provide flexibility to issuers so that they can raise the amount of capital they deem necessary to finance their businesses. For example, permitting oversubscriptions would allow an issuer to raise more funds, while lowering compliance costs, if the issuer discovers during the offering process that there is greater investor interest in the offering than initially anticipated or if the cost of capital is lower than initially anticipated.

The proposed rules also would not require issuers to set a fixed price or prohibit dynamic pricing. We believe that allowing issuers flexibility in setting the offering price would allow them to extract investors' reservation price for a given offering or to incentivize investors to subscribe to an offering early, thus increasing the likelihood that the offering would be successful. Further, the proposed required disclosure of the pricing method used and the final prices for the securities before an offering closes,[974] coupled with the investor's ability to cancel his or her investment commitment,[975] could mitigate potential concerns that dynamic pricing could be used to provide preferential treatment to certain investors (*e.g.,* when an issuer offers better prices to relatives or insiders). We also believe that the proposed cancellation rights would address the concerns about time pressure on the investment decision because investors would have the opportunity to cancel their investment commitments if they decide to do so.

h. Restrictions on Resales

The statute and the proposed rules also include restrictions on transfers of securities for one year, subject to limited exceptions (*e.g.,* for transfers to the issuer of the securities, in a registered offering, to an accredited investor or to certain family members).[976] The proposed rules also would permit transfers to trusts controlled by, or held for the benefit of, covered family members.[977] We believe that including such proposed restrictions is important for investor protection. By restricting the transfer of securities for a one-year period, the proposed rules would give investors in a business a defined period to observe the performance of the business and to potentially obtain more information about the potential success or failure of the business before trading occurs. The restrictions on resales, however, may impede price discovery.

The proposed one-year restriction on transfers of securities purchased in a transaction conducted in reliance on Section 4(a)(6) might reduce trading liquidity, raise capital costs to issuers and limit investor participation, particularly for investors who cannot risk locking up their investments for this period. The illiquidity cost would be mitigated, in part, by provisions that allow investors to transfer the securities within one year of issuance by reselling the securities to accredited investors, back to the issuer or in a registered offering or transferring them to certain family members or trusts of those family members. These provisions likely would improve the liquidity of these securities and, thus, could increase investor participation in securities-based crowdfunding offerings.

4. Intermediary Requirements

The statute and the proposed rules require that transactions be conducted through a registered broker or registered funding portal. The use of a registered intermediary to match issuers and investors would require that they incur certain transactions costs necessary to support the intermediation activity, but also would provide centralized venues for crowdfunding activities that should lower investor and issuer search costs. As discussed earlier, existing rewards-based and donations-based crowdfunding platforms already engage in a large number of transactions, estimated at over 500,000 successful campaigns in the aggregate,[978] demonstrating that the use of platforms for crowdfunding may be familiar to investors and issuers.

We believe that existing crowdfunding platforms would initially be the primary, non-broker-dealer intermediaries in the securities-based crowdfunding market. Registered brokers, or broker-dealers that are currently unregistered, but are planning to register in the future, also might wish to enter the securities-based crowdfunding market, which would increase the competition among crowdfunding intermediaries and potentially lower the cost of intermediation to issuers. Both existing non-securities-based crowdfunding platforms and registered brokers might need to invest resources (including costs to comply with the proposed regime) to create the infrastructure for securities-based crowdfunding, with brokers likely investing to develop an Internet-based platform and non-securities-based crowdfunding platforms investing to register as funding portals and revise their existing sites to comply with the requirements of the statute and the proposed rules. Although the eventual extent of broker involvement in the securities-based crowdfunding market is difficult to anticipate, we believe that some brokers might acquire or form partnerships with funding portals to obtain access to a new and diverse investor base. In addition, some existing non-securities-based crowdfunding platforms might eventually either register as brokers or form partnerships with registered brokers to offer brokerage services as part of their service offerings. As discussed above, we believe that there could be incentives for funding portals to pursue such partnerships, because of brokers' expertise and access to investors, as well as because of the statutory and proposed rule restrictions on funding portal activities.

Although it is not possible to predict precisely the future number of persons (or entities) who would register as either brokers or funding portals to act as intermediaries in securities-based crowdfunding transactions,[979] we

[972] *See* proposed Rule 303(c) of Regulation Crowdfunding.

[973] *See* proposed Rule 201(h) of Regulation Crowdfunding. *See also* Section II.B.6.i above.

[974] *See* proposed Rule 201(*l*) of Regulation Crowdfunding.

[975] *See* proposed Rule 201(j) of Regulation Crowdfunding.

[976] *See* Section 4A(e). *See also* proposed Rule 501 of Regulation Crowdfunding.

[977] *See* proposed Rule 501(a)(4) of Regulation Crowdfunding.

[978] *See* note 863.

[979] There are significant challenges to establishing a statistically reliable estimate of the number of intermediaries that would participate in the securities-based crowdfunding market. For example, in a similar context, a 2005 report on private placement broker-dealers determined that there is no effective measuring device to estimate the number of intermediaries for small businesses currently in the marketplace. *See* Task Force on Private Placement Broker-Dealers, note 894. We also recognize that there are limitations on predicting

estimate that intermediaries would number approximately 110, including approximately 10 intermediaries that would register as brokers in order to engage in crowdfunding, approximately 50 intermediaries that would already be registered as brokers and approximately 50 intermediaries that would register as funding portals.[980] It is possible that the actual number of participants could deviate significantly from these estimates, and it is likely that there would be significant competition between existing crowdfunding venues and new entrants that could result in further changes in the number and types of intermediaries as the market develops and matures. It also is likely that there will be significant developments in the types and ranges of crowdfunding products and services offered to potential issuers and investors, particularly as competitors learn from their experiences. Moreover, the business models of the successful crowdfunding intermediaries are likely to change over time as they grow in size or market share or if they are forced to differentiate from other market participants in order to maintain a place in the market.

As a result of the uncertainty over how the market may develop, any estimates of the potential number of market participants, their services or fees charged are subject to significant estimation error. While we recognize that there are benefits as well as costs associated with the statutory requirements and the proposed rules pertaining to intermediaries, there are significant limitations to our ability to estimate the potential benefits and costs.

The statute requires that the offer or sale of securities in reliance on Securities Act Section 4(a)(6) be conducted through a broker or a funding portal that complies with the requirements of Securities Act Section 4A(a).[981] Among other things, the intermediary must register with the Commission as a broker or a funding portal, and it also must register with a registered national securities association.[982] The proposed rules would implement these statutory requirements, including by requiring an intermediary to be a member of FINRA or any other applicable registered national securities association.

We recognize that there are benefits and costs associated with the statutory requirements and the proposed rules pertaining to intermediaries. While the benefits and costs are described in further detail below, the following tables summarize the estimated direct costs to intermediaries, including brokers and funding portals. Some of the direct costs of the rules would be incurred by all intermediaries, while others are specific to whether the intermediary is a new entrant (either broker or funding portal) or is already registered as a broker.

Although we have attempted to estimate the direct costs on intermediaries, we recognize that some costs could vary significantly across intermediaries, and within categories of intermediaries. For example, some intermediaries may choose to leverage existing platforms or systems and so may not need to incur significant additional expenses to develop a platform or comply with specific proposed requirements of Regulation Crowdfunding. In light of these uncertainties, we encourage commenters to provide data and analysis to help analyze and quantify further the potential benefits and costs of these rules.

We estimate that the cost for an entity to register as a broker and become a member of a national securities association in order to engage in crowdfunding pursuant to Section 4(a)(6) would be approximately $275,000, with an ongoing annual cost of approximately $50,000 to maintain that registration and membership.[983] In addition, we estimate that the cost to comply with the various requirements that apply to registered brokers engaging in transactions pursuant to Section 4(a)(6) would be approximately $245,000 initially, and $180,000 each year thereafter. In making this estimate, we assume that brokers acting as intermediaries in transactions pursuant to Section 4(a)(6) would provide a full range of brokerage services in connection with these transactions, including certain services such as providing investment advice and recommendations, soliciting investors, and managing and handling customer funds and securities, that funding portals cannot provide.[984]

If instead an entity were to register as a funding portal and become a funding portal member of a national securities association, we estimate the initial cost would be approximately $100,000, with an ongoing cost of approximately $10,000 in each year thereafter to maintain this registration and membership.[985]

These estimated costs are exclusive of the cost of establishing and maintaining a platform and related functionality. We anticipate that a significant percentage of intermediaries (whether brokers or funding portals) will already have in place platforms and related systems that would only need to be tailored to comply with the requirements of Title III of the JOBS Act and Regulation Crowdfunding. We estimate that a cost

the number of intermediaries that would participate in securities-based crowdfunding, based on existing practices in the donation-based and rewards-based crowdfunding markets or foreign securities-based crowdfunding. In particular, platforms currently involved in donation-based and rewards-based crowdfunding may be motivated by philanthropic interests and may not intend to expand their platforms to offer securities-based crowdfunding opportunities. In addition, foreign securities-based crowdfunding takes place in a different regulatory setting, and thus, the market may not develop the same way in the United States.

[980] These estimates are based, in part, on current indications of interest, which may change as the market develops. According to FINRA, as of October 3, 2013, approximately 36 entities have submitted the voluntary Interim Form for Funding Portals to FINRA to indicate their intention to act as funding portals under the JOBS Act. *See* Press Release, Financial Industry Regulatory Authority, FINRA Issues Voluntary Interim Form for Crowdfunding Portals (Jan. 10, 2013), *available at http://www.finra.org/Newsroom/NewsReleases/2013/P197636*; Financial Industry Regulatory Authority, *Crowdfunding Portals, available at http://www.finra.org/industry/issues/crowdfunding*. Based on the current indication of interest, we expect that the number of funding portals that would ultimately register with the Commission will be approximately 50. This estimate may change as the market develops.

[981] Section 4(a)(6)(C).

[982] Section 4A(a)(2).

[983] We recognize that the cost of registering and becoming a member of a national securities association varies significantly among brokers, depending on facts and circumstances. Among other things, the cost can vary depending on the number of associated persons of the broker entity and their licensing requirements, the scope of the proposed brokerage activities, and the means by which the broker administers the registration process (*e.g.,* it may choose to hire outside counsel to assist with the process). We also recognize that the time required for a broker to become a member of a national securities association varies and could take six months to one year. We estimate the range of this cost to be between $50,000 and $500,000, and so we have chosen the average amount of $275,000 for purposes of this discussion.

[984] Among other things, a broker providing recommendations and investment advice would be required to comply with FINRA rules on suitability. *See* FINRA Rule 2111. A broker soliciting through advertisements would be required to comply with FINRA rules relating to communications with the public. *See* FINRA Rule 2210. Brokers handling customer funds and securities also would be required to maintain net capital, segregate customer funds and comply with Exchange Act Rule 15c2–4. *See* Exchange Act Rules 15c3–1, 15c3–3 and 15c2–4 [17 CFR 240.15c3–1, 15c3–3 and 15c2–4].

[985] In making these estimates, we assume that the membership process would take approximately one month and that there would be no related licensing requirement for associated persons of the funding portal. We also only include domestic entities in these estimates, which would not need to comply with the proposed requirements in Regulation Crowdfunding that would apply to nonresident funding portals. Nonresident funding portals would be subject to an additional cost of approximately $25,870 to comply with the costs of completing Schedule C to Form Funding Portal, hiring and maintaining an agent for service of process and providing the required opinion of counsel.

of approximately $100,000 in the first year, and approximately $40,000 annually thereafter for an intermediary that already has in place a platform and related systems. However, for an intermediary (whether broker or funding portal) that would need to develop a platform from scratch, we estimate the cost to do so would be approximately $400,000 in the initial year, and approximately $40,000 annually to maintain thereafter.

ESTIMATED COSTS OF INTERMEDIARIES THAT REGISTER AS BROKERS

	Estimated costs	
	Initial cost (year 1)	Ongoing cost per year
Form BD Registration and National Securities Association Membership	$275,000	$50,000
Complying with Requirements to Act as an Intermediary in, and to Engage in Broker Activities Related to, Transactions pursuant to Section 4(a)(6)[986]	245,000	180,000
Platform Development	[987] 250,000	40,000
Subtotal	*770,000*	*270,000*

ESTIMATED COSTS OF INTERMEDIARIES THAT REGISTER AS FUNDING PORTALS

	Estimated costs	
	Initial cost (year 1)	Ongoing cost per year
Form Funding Portal Registration and National Securities Association Membership[988]	$100,000	$10,000
Complying with Requirements to Act as an Intermediary[989]	67,000	40,000
Platform Development[990]	250,000	40,000
Subtotal	*417,000*	*90,000*

ESTIMATED INCREMENTAL COSTS OF INTERMEDIARIES ALREADY REGISTERED AS BROKERS

	Estimated costs	
	Initial cost (year 1)	Ongoing cost per year
Complying with Requirements to Act as an Intermediary in Transactions pursuant to Section 4(a)(6)[991]	$45,000	$30,000
Platform Development[992]	250,000	40,000
Subtotal	*295,000*	*70,000*

We believe that, while the registration requirements would necessarily impose costs on intermediaries, they also would provide significant protections for the crowdfunding investor marketplace. Among other things, in addition to the Commission's oversight and rule-writing functions with regard to broker-dealers, FINRA currently is responsible for conducting most broker-dealer examinations, mandating certain disclosures by its members, writing rules governing the conduct of its members and associated persons, and informing and educating the investing public. Similarly, the regulatory framework that a registered national securities association—likely initially FINRA—would be required to create for funding portals would play an important role in the oversight of these entities.

The estimated costs in the table above reflect the direct, quantifiable costs that intermediaries would incur in connection with registering as a broker on Form BD or as a funding portal on Form Funding Portal, submitting amendments to registrations and withdrawing registrations. We estimate that approximately 50 intermediaries that would already be brokers that have already registered with the

[986] As discussed above, these costs include, among others, the costs to the broker of having associated persons, who have licensing requirements, suitability requirements, requirements relating to advertisements, net capital and fidelity bond requirements, and compliance with Exchange Act Rule 15c2–4 (17 CFR 240.15c2–4), as well as the costs of complying with proposed Subpart C of Regulation Crowdfunding. *See* Section IV.C. 2 below for further detail on the costs associated with the requirements under proposed Subpart C.

[987] As described above, the cost to develop a platform is expected to vary depending on the extent to which the entity already has a platform and related systems in place. For purposes of this chart, we use the average of the range provided above ($100,000 to $400,000 in the initial year).

[988] As described above, this estimate reflects a streamlined process of becoming a member of a national securities association, which we assume would take approximately one month and not involve application or licensing of associated persons.

[989] This includes the costs of complying with the requirements of proposed Subparts C and D of Regulation Crowdfunding. *See* Section IV.C.2 below for further detail on these costs.

[990] As described above, the cost to develop a platform is expected to vary depending on the extent to which the entity already has a platform and related systems in place. For purposes of this chart, we use the average of the range provided above. *See* Section IV.C.2 below for further detail on costs associated with developing a platform.

[991] This includes the incremental costs of complying with the requirements of proposed Subpart C of Regulation Crowdfunding, but it excludes any registration or membership requirements. *See* Section IV.C.2 below for further detail on these costs.

[992] As described above, the cost to develop a platform is expected to vary depending on the extent to which the entity already has a platform and related systems in place. For purposes of this chart, we use the average of the range provided above. *See* Section IV.C.2 below for further detail on costs associated with developing a platform.

Commission [993] and, as such, these brokers would not incur additional SEC registration costs associated with the proposed rules. Additionally, intermediaries that are not otherwise registered with FINRA or any other registered national securities association would need to register, and the estimated cost for such registration is included in the table above. We anticipate that the cost for a funding portal to become a member of a registered national securities association would be proportionately less than the cost for a broker to do so because of the more limited nature of a funding portal's permissible activities, and the streamlined set of rules that the association would impose on funding portals.[994] However, the exact cost of registration for funding portals would not be known until a registered national securities association adopts rules applicable to funding portals, and for purposes of this economic analysis, we have used a conservative estimate for this cost based on the current fee and costs applicable to brokers applying to become members of a national securities association.

The proposed rules would also require that an intermediary execute transactions exclusively through its online platform. This requirement should help to minimize the potential for ''boiler room'' and other similar abusive sales practices. Based on comments received and our discussions with industry participants,[995] we believe that the use of an online platform would enhance the ability of issuers and investors to transparently communicate as compared to the alternative of allowing transactions to occur offline. This requirement should help issuers gain exposure to a wide range of potential investors, who also may benefit from having numerous investment opportunities aggregated in one place, resulting in lower search costs or burdens related to identifying suitable investment opportunities.

We preliminarily estimate that the requirement to use an intermediary could result in transaction costs for issuers of 5% to 15% of the amount of the offering made in reliance on Section 4(a)(6),[996] depending on the intermediary used and the fees charged for services, including payment processing. Although crowdfunding intermediaries are not expected to provide issuers with underwriting services commensurate with registered offerings (and, in fact, funding portals would be prohibited from doing so), the fees charged in a crowdfunding offering could be significantly larger on a percentage basis relative to the underwriting fees for registered offerings, which range from as high as 7% for initial public offerings to less than 1% for certain bond issuances.[997] In general, to the extent that a significant component of the fees is fixed, the transaction costs for issuers would make smaller issues more expensive. Although crowdfunding offerings would likely vary in size, based on an offering size of $100,000, an issuer would incur an average of $5,000 to $15,000 in fees. As previously discussed, we believe that competition among potential crowdfunding venues and the potential development of new products and services could have a significant impact on these estimates over time.

a. Disclosure and Dissemination Requirements

The statute and proposed rules include disclosure and dissemination provisions designed to provide information to security-based crowdfunding investors. These provisions, together with the issuer disclosure provisions discussed above, are expected to limit information asymmetries and promote the efficient allocation of capital amongst crowdfunding issues. Additionally, these disclosure and dissemination provisions would provide information intended to ensure that investors are aware of the risks associated with their investment, which would help protect investors in this new market. As discussed above, many of these costs and benefits are difficult to quantify or estimate with any degree of certainty, especially considering securities-based crowdfunding provides a new method for raising capital in the United States. To the extent possible, however, we have quantified the direct costs to intermediaries associated with these provisions in the table above. The proposed rules would prohibit any intermediary or its associated persons from accepting an investment commitment until the investor has opened an account with the intermediary and the intermediary has obtained the investor's consent to electronic delivery of materials. This requirement would help ensure that certain basic information about the investor is on file with the intermediary and that all investors are on notice of the primary method of delivery for communications from the intermediary. We estimate the direct cost of this requirement in the table above.

The statute requires intermediaries to provide disclosures related to risks and other investor education materials. The proposed rules would implement this statutory mandate by requiring intermediaries to deliver educational materials that explain how the offering process works and the risks associated with investing in crowdfunding securities.[998]

The proposed educational requirements would help make investors aware of the limits and risks associated with purchasing crowdfunding securities. Such knowledge would help investors understand the payoff structures that are specified by the offering contractual features and the circumstances under which they could expect to be compensated. It also would help ensure that offerings proceed more efficiently as investors would be more informed by the time they decide to make their investment commitments and receive required notices. We recognize that the effectiveness of the educational materials to enhance investor protection would vary depending upon the education and experience of retail investors.[999] In addition, a presentation that highlights the risks of securities-based crowdfunding could discourage investor participation.

Under the proposed rules, the educational materials could be in any electronic format, including video format, and the intermediary would have the flexibility to determine how best to communicate the contents of the educational material, thus the cost for intermediaries to develop educational materials is expected to vary widely. The table above includes our current estimates of the direct, quantifiable costs that would be incurred to comply with the proposed requirement, as well

[993] *See* Section IV.C.2 below.

[994] *See* FINRA, *Jumpstart Our Business Startups Act: FINRA Requests Comment on Proposed Regulation of Crowdfunding Activities,* FINRA Regulatory Notice 12–34 (July 2012), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p131268.pdf* (''In writing rules specifically for registered funding portals, FINRA would seek to ensure that the capital-raising objectives of the JOBS Act are advanced in a manner consistent with investor protection. Commenters are urged to identify the types of requirements that should apply to registered funding portals, taking into account the relatively limited scope of activities by a registered funding portal permitted under the JOBS Act.'')

[995] *See* note 888.

[996] *See* note 918.

[997] *See* note 817 and accompanying text.

[998] *See* proposed Rule 302(b) of Regulation Crowdfunding.

[999] *See* Jennifer E. Bethel and Allen Ferrell, *Policy Issues Raised by Structured Products,* Harv. L. & Econ. Discussion Paper No. 560, 2007, *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=941720.*

as additional costs to update or revise the materials from time to time.

The proposed rules also require that intermediaries obtain representations from investors regarding their review of the investor education materials and their understanding of the risks.[1000] The Commission believes these proposed rules would improve investors' understanding of crowdfunding generally, as well as aspects of certain types of securities and the implications for their investments in issuers that are raising capital through securities-based crowdfunding in reliance on Section 4(a)(6). We estimate that the direct costs of this requirement to an intermediary would be incorporated into the costs of developing a platform and that the ongoing burden to comply would be minimal. This proposed requirement also might impose a further cost to the extent that the requirement deters investors from making investment commitments or otherwise participating in offerings made in reliance on Section 4(a)(6).

The proposed rules would also require an intermediary to clearly disclose the manner in which the intermediary is compensated in connection with offers and sales of securities in reliance on Section 4(a)(6).[1001] As explained above, we believe that investors would benefit by having information about how intermediaries are compensated, such as through compensation arrangements with affiliates. We believe that the costs of complying with this requirement also generally would be included in the overall cost for intermediaries to develop their platforms, as it would entail adding an item of disclosure that would be built into the functionality of their platforms. The costs are reflected in the table above, and we believe that this requirement would impose only nominal incremental costs on intermediaries on an ongoing basis. We also do not expect significant competitive costs from the disclosure of such compensation arrangements.

The statute and the proposed rules further would require that intermediaries make available certain issuer-provided information. As described above, intermediaries would have to implement and maintain systems to comply with the information disclosure requirements so that the information was publicly available and easily accessible on the intermediary's platform by interested persons.

The issuer disclosure requirements should benefit investors by enabling them to better evaluate the issuer and the offering. Requiring intermediaries to make the issuer information publicly available and easily accessible on their platforms would reduce information asymmetries between issuers and investors and would enhance both transparency and efficiency of the market. We expect that intermediaries would incur costs to develop the functionality that would allow the uploading and downloading of issuer information. We believe that the direct costs of complying with this requirement would be included in the overall cost to intermediaries to develop their platforms and that this requirement would impose only nominal incremental costs on intermediaries on an ongoing basis, primarily because the functionality necessary to upload the required issuer disclosure information is a standard feature offered on many Web sites and would not require frequent updates.

The proposed rules would also require an intermediary to provide communication channels on its platform, meeting certain conditions, which would allow investors who have opened accounts with intermediaries and representatives of the issuer to interact and exchange comments about the issuer's offering on that intermediary's platform, and which would be publicly available for viewing (*i.e.,* by those who may not have opened accounts with the intermediary).[1002] While Congress contemplated the use of such communication channels, the statute does not explicitly require intermediaries to provide them.[1003] Compared with the alternative of not requiring intermediaries to provide communication channels, we believe that requiring the communications channel to be on the intermediary's platform would allow investors, particularly those who might be less familiar with online social media, to participate in online discussions regarding ongoing offerings without having to actively search for such discussions on external Web sites. We do recognize, however, that this requirement would not preclude investors from initiating additional discussions on external Web sites. Furthermore, the requirements that the communication channels be viewable by the public and that promoters be clearly identified on these channels would enhance transparency about the issuer and its offering with appropriate disclosures, ultimately allowing investors to make more informed investment decisions. We estimate that the costs of this proposed requirement are incorporated into the costs of developing a platform and that once the platform has been set up the ongoing burden to comply would be minimal.

We are also proposing to require intermediaries to, upon receipt of an investment commitment from an investor, promptly provide or send to the investor a notification of that investment commitment.[1004] While this notice is not statutorily required, we believe that this requirement is appropriate as it would provide investors with key information about their investment commitments, including notice of the opportunity, as relevant, to cancel their investment commitments. Investors would benefit from these requirements because they would be provided with the necessary information to evaluate their investment commitments, their securities transactions and the intermediaries that are effecting those transactions. We estimate that the costs of these requirements are incorporated into the costs of developing a platform and that the ongoing burden to comply would be minimal.

We also propose to implement the statutory requirement for intermediaries to allow investors to cancel their commitments to invest, by requiring investors to have until 48 hours prior to the deadline identified in the issuer's offering materials to cancel their investment commitments.[1005] If an issuer reaches its target offering amount prior to the target offering deadline, the proposed rules would permit early closing of the offering, provided that the intermediary sends notices to investors informing them of the closing and the deadline for the opportunity to cancel.[1006] The proposed rules also would set forth notice requirements and requirements related to the intermediary directing payments in the event of cancellations and material changes to offerings.[1007] The proposed rules would impose specific obligations on intermediaries related to informing investors about their right to cancel, depending on particular circumstances relating to timing of the offering, such as in the event of early closings,

[1000] *See* proposed Rule 303(b)(2) of Regulation Crowdfunding.

[1001] *See* proposed Rule 302(d) of Regulation Crowdfunding.

[1002] *See* proposed Rule 303(c) of Regulation Crowdfunding.

[1003] *See* Section 4A(b)(3).

[1004] *See* proposed Rule 303(d) of Regulation Crowdfunding.

[1005] *See* proposed Rule 304(a) of Regulation Crowdfunding.

[1006] *See* proposed Rule 304(b) of Regulation Crowdfunding.

[1007] *See* proposed Rules 304(c) and (d) of Regulation Crowdfunding.

cancellations and material changes that trigger reconfirmations of investment commitments.

We believe that investors would benefit from receiving these notices because the notifications and accompanying information would keep investors informed about the status of the offering and help them make informed investment decisions. We further believe that investors would reasonably expect to be informed of changes impacting the timing of offerings and other material changes. This approach also would benefit investors by providing investors with sufficient time to review and assess information and communications about the issuer.

We recognize that allowing investors to cancel their investment commitments up to 48 hours prior to the deadline identified in the issuer's offering materials may impose a cost on issuers who, because of investors cancelling commitments late in the offering period, may fall below the target offering amount and so decide to cancel the offering or to extend the offering period. Accordingly, we recognize that this requirement may have an effect on capital formation. Intermediaries also may incur direct costs in developing and maintaining such systems, for instance to send the relevant notices to investors, as part of the cost of developing a platform reflected in the table above.

b. Measures To Reduce the Risk of Fraud and Limitations

The statute and proposed rules require intermediaries to take certain steps to reduce the risk of fraud, including steps related to checking whether issuers are eligible to rely on Section 4(a)(6) and whether investors comply with investment limits in order to participate in an offering pursuant to Section 4(a)(6). We believe that intermediaries will be in the best position to take these steps and that these requirements will increase investor protections. Additionally, the statute and proposed rules place certain limitations on intermediaries. These limitations are further meant to increase investor protection in the securities-based crowdfunding market. As noted above, the costs and benefits of these provisions are difficult to quantify or estimate with any degree of certainty. To the extent possible, however, we have quantified estimates of the direct costs associated with these provisions and the proposed rules in the table above.

The proposed rules would require that an intermediary have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's platform complies with the requirements in Section 4A(b) of the Securities Act and the related requirements in Regulation Crowdfunding. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning compliance with these requirements unless the intermediary has reason to question the reliability of those representations. The proposed rules would also require that an intermediary have a reasonable basis for believing that an issuer seeking to offer and sell securities on the intermediary's platform complies with all issuer requirements and has established means to keep accurate records of holders of the securities. The proposed rules would permit an intermediary to rely on an issuer's representations concerning compliance with these requirements unless the intermediary has reason to question the reliability of the representations. The proposed rules also would require an intermediary to deny access to an issuer if it has a reasonable basis for believing that the issuer or any of its officers, directors (or any person occupying a similar status or performing a similar function) or 20 Percent Beneficial Owners was subject to a disqualification under the proposed rules. As required by the statute, the proposed rules would require the intermediary to conduct a background and securities enforcement check on each of these persons. Furthermore, the proposed rules would require an intermediary to deny access to its platform if the intermediary believes that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection.[1008] Each of these proposed requirements is intended to help reduce the risk of fraud in securities-based crowdfunding.

We believe that if intermediaries take the measures we propose to require, investors would be more willing to participate in securities-based crowdfunding offerings. Investors would rely on the efforts of the intermediary that conducted a background and securities enforcement regulatory history check, solving a collective action problem that would be prohibitively costly if left to individual investors. To the extent these checks lessened the likelihood of inappropriate or nefarious activity, they could increase investor willingness to purchase crowdfunding securities, thereby potentially resulting in issuers having greater access to capital. We anticipate that most intermediaries would employ third parties to perform background checks.

We also recognize that permitting an intermediary to rely on an issuer's representations unless the intermediary has reason to question the reliability of the representations could potentially lessen the incentive for an intermediary to thoroughly investigate the issuers and securities to be offered on its platform. Such an outcome could result in a higher levels of fraud compared to a requirement that intermediaries perform a thorough investigation to ensure that the issuer complied with all the requirements. A higher level of fraud would negatively affect both investors in crowdfunding offerings and non-fraudulent issuers. Based on comments and conversations with industry participants,[1009] however, we believe it is likely that investors and interested participants would provide relevant adverse information about an issuer or an offering through postings on chat sites, message boards, and other communication channels, including, but not limited to, the communication channels to be provided by the intermediary. These media would provide a potential source of information for intermediaries who may be subject to liability as ''issuers.''

The proposed rules also would require an intermediary to have a reasonable basis for believing that an investor has not exceeded the investment limits discussed above before accepting an investment commitment from that investor.[1010] Under the proposed rules, an intermediary may rely on an investor's representations concerning compliance with the investment limits unless the intermediary has reason to question the reliability of the representations. We believe that this requirement would help to ensure that the investor protection benefits associated with the investment limits are realized. This ability to rely on investor representations should help mitigate the potential cost that intermediaries could incur in relation to this requirement. At the same time, we realize that investors might make inaccurate representations, whether intentionally or not. Although some of these concerns could be addressed by the use of a central data repository, for example, the statute does not mandate the use of such a central

[1008] *See* proposed Rule 301 of Regulation Crowdfunding.

[1009] *See* note 888.

[1010] *See* proposed Rule 303(b)(1) of Regulation Crowdfunding.

data repository and we are not proposing to require one because, as we consider this alternative to the proposed standard, we believe that the benefits of establishing such a repository would not at this time justify the potentially significant costs. Accordingly, we believe that the standard proposed represents a reasonable approach to implement the statutory requirement, achieving an appropriate balance between competing concerns.

We expect that because system functionality to obtain user acknowledgments is standard on many online trading and electronic commerce Web sites, the market to build such system functionality is highly commoditized and the average cost to both develop and maintain systems that allow an investor to represent that he or she has not exceeded allowable investment limits would not be unduly high. As noted in the table above, we estimate that the cost to comply with this requirement would be incorporated into the costs to develop a platform and that the ongoing burden to comply would be minimal.

As noted above, the statute and the proposed rules would also prohibit an issuer from compensating, or committing to compensate, directly or indirectly, any person to promote the issuer's offering through communication channels provided by the intermediary unless the issuer takes reasonable steps to ensure that such person clearly discloses the receipt (both past and prospective) of such compensation each time a promotional communication is made. We also are proposing to require that an intermediary take certain steps to ensure that investors are made aware of such compensation, and that such compensation is disclosed in the communication channels, so that investors can gauge the promoter's communications appropriately.[1011] We believe that intermediaries would be in an appropriate position to take such steps. As part of the account opening, the intermediary would be required disclose to persons opening accounts that any person who receives compensation to promote an issuer's offering, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the issuer on the intermediary's platform, must clearly disclose on the platform the receipt of the compensation and that he or she is engaging in promotional activities on behalf of the issuer. In addition, under the proposed rules, the intermediary must require that any person posting a comment in the communication channels clearly disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote the issuer's offering.

Under the proposed rules, intermediaries might incur direct costs in complying with the requirements to disclose compensation to promoters, and certain additional costs from time to time to ensure continued compliance, as outlined in the table above. In addition, if this proposed requirement discourages the use of promoters by issuers, it could limit the investor pool for a securities-based offering made in reliance on Section 4(a)(6), thus limiting the ability of an issuer to raise capital.

Additionally, the statute prohibits the directors, officers or partners of an intermediary, or any person occupying a similar status or performing a similar function, from having any financial interest in an issuer that uses the services of the intermediary. The proposed rules would implement this statutory requirement but extend the prohibition to the intermediary as well.[1012] Such a prohibition would be beneficial to investors and issuers because if an intermediary were to have a financial interest in one or more issuers that plan to use its services, the intermediary could have an incentive not based solely on merit to promote that issuer's offering, potentially to the detriment of investors and other issuers. The prohibition would, however, impose a cost on an issuer who might otherwise seek to compensate an intermediary with an interest in the issuer, rather than cash, for its services. It is thus possible that the prohibition could make securities-based crowdfunding unavailable to an issuer that does not have the ability to otherwise compensate an intermediary.

The statute requires that intermediaries ensure that all offering proceeds are provided to the issuer only when the aggregate capital raised from all investors is equal to or greater than a target offering amount. The proposed rules would implement this requirement by requiring intermediaries that are registered as brokers to comply with the existing requirements of Exchange Act Rule 15c2–4.[1013] Intermediaries registered as funding portals would be required to direct investors to transmit the funds or other consideration directly to a qualified third party, which is a bank, that has agreed in writing to hold the funds or maintain a bank account (or accounts) for the exclusive benefit of, and to promptly transmit the funds to, the issuer or the investors, depending on circumstances such as whether the offering was completed or was cancelled, and whether the investment commitment was cancelled. The proposed rules also would require a funding portal to direct the qualified third party to transmit funds to the issuer once the target offering amount is reached and the cancellation period has elapsed; to return funds to an investor when an investment commitment has been cancelled; and to return funds to investors when the offering has not been completed.

These requirements would benefit investors and issuers by helping to ensure that funds are appropriately refunded or transmitted in accordance with the terms of the offering. In particular, the requirement that the account in which funds are deposited be exclusively for the benefit of investors and the issuer would help prevent the intermediary or other parties from claiming or otherwise unlawfully taking funds from that account.

Under the statute, intermediaries also may not compensate promoters, finders or lead generators for providing brokers or funding portals with the personally identifiable information of any potential investor. We propose to implement this statutory requirement by prohibiting an intermediary from compensating any person for providing the personally identifiable information of any crowdfunding investor or potential investor to intermediaries.[1014] We anticipate that intermediaries would have some need for referrals to the intermediary's platform and, therefore, we are proposing to permit an intermediary to compensate a person for directing issuers or potential investors to the intermediary's platform in certain situations.[1015] These requirements would benefit intermediaries by providing them with a means to attract more investors to their crowdfunding portals, without allowing the sharing of personally identifiable information. Investors would meanwhile benefit from the additional privacy protection. Intermediaries might incur a cost because the proposed requirement would not allow them to use personally identifiable information to target and

[1011] *See* proposed Rules 302(c) and 303(c)(4) of Regulation Crowdfunding.

[1012] *See* proposed Rule 300(b) of Regulation Crowdfunding.

[1013] *See* proposed Rule 303(e) of Regulation Crowdfunding.

[1014] *See* proposed Rule 305(a) of Regulation Crowdfunding.

[1015] *See* proposed Rule 305(b) of Regulation Crowdfunding.

seek out specific investors, thus reducing the potential investor pool for certain offerings.

5. Additional Funding Portal Requirements

Under the proposed rules, a funding portal would register with the Commission by filing a complete Form Funding Portal with information concerning the funding portal's operation.[1016] In the table above, we estimate the costs that intermediaries would incur related to registering as a funding portal on Form Funding Portal.

The proposed rules would include the statutory requirement that a funding portal be a member of a registered national securities association. As explained above, we believe that the statute effectively mandates that an intermediary be a FINRA member or any other registered national securities association (as applicable). The proposed requirement that funding portals register with the Commission and a registered national securities association benefits investors by providing oversight to reduce the risk for fraud. Although we estimate that there are costs associated with this requirement, we believe that the reduction in fraud risk deriving from this requirement might benefit portals by helping to create a marketplace in which investors are more willing to participate and issuers are more comfortable using this method of capital formation.

The proposed rules also would require that funding portals use proposed Form Funding Portal to provide updates whenever information on file becomes inaccurate for any reason, to register successor funding portals and to withdraw from funding portal registration. Although funding portals would incur time and compliance costs to update Form Funding Portal, we expect funding portals would have navigated the filing process for Form Funding Portal when they register and would be familiar with the process by the time they update the form.

We propose to allow nonresident funding portals to register with us, provided that certain conditions are met. One condition is that an information sharing agreement is in place between the Commission and a competent regulatory authority in the relevant jurisdiction. The proposed rules would also require a nonresident funding portal to appoint an agent for service of process in the United States, and to certify and provide opinion of counsel that as a matter of law, the funding portal can provide the Commission and any national securities association of which it is a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and the national securities association.

Compared to an alternative that we could have selected, *i.e.,* that of not allowing nonresident entities to operate as funding portals in the U.S. crowdfunding market, the proposed rules would increase competition among crowdfunding intermediaries, which in turn is likely to reduce the fees that intermediaries charge issuers. The lack of data does not allow us to estimate the magnitude of this potential fee reduction. Lower costs of raising capital could also attract more potential issuers to use the crowdfunding exemption, thus enhancing capital formation. Conditioning the nonresident funding portal registration on the presence of an information sharing agreement as mentioned above would provide regulators and market participants with more information about the nonresident funding portals, thus reducing the likelihood of fraud.

Although the requirements we propose with respect to appointment of an agent for service of process, and a certification and legal opinion would impose costs on nonresident funding portals, these requirements are consistent with regulations we have proposed to impose on other nonresident entities subject to our regulation. The proposed regulations would enhance investor protection by requiring steps to ensure that funding portals that were not based in the United States, or that were subject to laws other than those of the United States, would nevertheless be accessible to the Commission and other relevant regulators for purposes of conducting examinations of, and enforcing U.S. laws and regulations against these entities. While the JOBS Act does not distinguish between resident and nonresident funding portals, it clearly contemplates Commission oversight of registered funding portals and the tailoring of such requirements to varied circumstances.

The statute also provides an exemption from broker-dealer registration for funding portals. The proposed rules would implement the statutory requirement by stating that a registered funding portal is exempt from the broker registration requirements of Exchange Act Section 15(a)(1) in connection with its activities as a funding portal.[1017] This proposed rule would benefit funding portals because it would specify the scope of the limited exemption in the statute, thus providing clarity to the funding portals regarding their activities. We believe this approach of exempting funding portals from broker registration and its accompanying regulations would benefit the market and its participants. The activities of funding portals would be more limited than those of brokers. Thus, the proposed rules would require funding portals to comply with a registration requirement and set of regulations more appropriate for their activities, rather than the more extensive and higher cost requirements that accompany broker-dealer registration. Lower registration costs of funding portals could translate into lower fees they charge issuers that use these portals, thus benefiting issuers of crowdfunding securities and potentially increasing capital formation. We are unable to quantify these potential benefits. We do not expect any significant benefits to registered broker-dealers from this limited exemption for funding portals. Registered broker-dealers could be put at a competitive disadvantage because of the higher registration cost. They, however, will be allowed a wider variety of activities compared to funding portals, the benefits of which could more than compensate for the higher registration costs.

The proposed rules would also require a funding portal to obtain a fidelity bond, and maintain fidelity bond coverage for the duration of its registration as a funding portal.[1018] This requirement would benefit investors by protecting them to some extent from potential losses caused by fraud. Investors and issuers that used funding portals for their offerings would likewise benefit from the added stability that the fidelity bond protection would provide.

We estimated the costs of maintaining fidelity bond coverage based on conversations with insurance service companies for FINRA-registered firms and note that the actual cost of coverage for funding portals would vary depending on particular circumstances, such as the size of the firm. For instance, according to these sources, funding portals with fewer employees (*e.g.,* up to 30 employees) might incur lower fidelity bond costs than funding portals with more employees.

[1016] *See* proposed Rule 400(a) of Regulation Crowdfunding.

[1017] *See* proposed Rule 401(a) of Regulation Crowdfunding. *See also* Section IV.C.2.j below.

[1018] *See* proposed Rule 400(f) of Regulation Crowdfunding.

a. Safe Harbor for Certain Activities

Exchange Act Section 3(a)(80) prohibits funding portals from (1) offering investment advice or recommendations, (2) soliciting purchases, sales or offers to buy securities offered or displayed on the funding portal's platform, (3) compensating employees, agents or other such persons for solicitation or based on the sale of securities displayed or referenced on the funding portal's platform, or (4) holding, managing, possessing or otherwise handling investor funds or securities. The proposed rules would give funding portals, their associated persons, affiliates and business associates, a measure of clarity regarding activities that would be permissible without violating these statutory prohibitions, while also helping to protect investors from activities that would create potential conflicts of interest.[1019] Thus, compared with the alternative that we could have chosen, that of not providing the safe harbor, the proposed rules will likely reduce funding portals' regulatory burden (*e.g.,* it will be easier for funding portals to advertise their activities and attract issuers and investors, thus potentially increasing their revenue). The legal certainty provided by the safe harbors, for example proposed Rule 402(b)(4) which permits a funding portal to provide on its platform communication channels, would help ensure that the benefits of the substantive rule provisions are realized. Such measures have the potential to attract greater numbers of investors to crowdfunding through funding portals than would otherwise participate, thereby encouraging capital formation.

The proposed rules would permit a funding portal to apply objective criteria to limit the crowdfunding securities offered on its platform.[1020] Investors would benefit by being able to search, sort or categorize offerings on a funding portal's platform in an organized manner, which would allow them to find investment opportunities meeting specific criteria. This functionality would more efficiently match investors with investment opportunities. These proposed rules would benefit funding portals by providing them with the flexibility to limit the use of their platform to certain types of issuers and to highlight certain offerings on their platforms which investors may find of interest.

Under the proposed rules, funding portals would be permitted to provide advice to an issuer on the structure and content of its offerings, including assistance to the issuer in preparing documentation.[1021] This proposed rule would allow issuers to obtain guidance that may not typically be available to them and lower funding costs. Many potential issuers seeking to offer and sell crowdfunding securities are unlikely to be familiar with how to best structure offerings so as to raise capital in the most cost effective manner, and they might not have the capital, knowledge or resources to hire outside advisors. Given that an issuer would be required to effect offerings through an intermediary, we believe that permitting funding portals to provide these services to issuers would lower overall transaction costs for issuers, as they would not need to engage another party to provide these services. This effect would in turn help to enhance market efficiency.

The proposed rules would also permit a funding portal to compensate a third party for referring a person to the funding portal in certain circumstances.[1022] As discussed above, this proposed safe harbor would benefit funding portals by providing them with a means to attract more investors to their crowdfunding platforms, while protecting investors' personally identifiable information. Investors also would benefit from the prohibition on transaction-based compensation (other than to registered broker-dealers), which would help to reduce the incentive for abusive practices.

The proposed rules would permit a funding portal to pay or offer to pay compensation to a registered broker or dealer for services provided in connection with the offer or sale of securities in reliance on Section 4(a)(6), subject to certain conditions set forth in the rule.[1023] Similarly, a funding portal could, subject to certain conditions, receive compensation from a registered broker or dealer for services provided by the funding portal.[1024] Under these proposed rules, funding portals would benefit from being able to enter into these types of arrangements with registered broker-dealers who could provide services that the funding portals otherwise would be prohibited from providing. Brokers also would benefit from the additional business that funding portals might be able to attract through their platforms and online presence generally, as well as from services, such as those related to technology, which funding portals could provide. Issuers and investors might benefit from such arrangements by having more readily-available services provided to them by entities subject to the applicable regulatory oversight.

The proposed rules would permit a funding portal to advertise its existence, subject to certain conditions.[1025] These requirements would benefit funding portals by allowing them to advertise publicly to attract more investors to their crowdfunding platforms; however, they might bear costs associated with ensuring compliance with the rule's conditions. The proposed rule also would enhance market efficiency as investors become more aware of available offerings through advertisements by funding portals and are thus able to better match their investments with projects that are most suitable for their risk preferences.

The statute requires intermediaries to take measures to reduce the risk of fraud, and we propose to implement this requirement by requiring a funding portal to deny access to its platform to an issuer that the funding portal believes presents the potential for fraud or otherwise raises concerns regarding investor protection.[1026] The requirement would further enhance investor protection by giving funding portals the flexibility to deny access to potential bad actors. Funding portals also would benefit from the ability to deny access to certain issuers to protect the integrity of the offering process and the market reputation of the crowdfunding platforms without fear of violating the prohibition on providing investment advice.

The proposed rules would clarify that a funding portal would not be in violation of the statutory prohibitions on holding, managing, possessing or otherwise handling investor funds or securities by accepting investment commitments from potential investors.[1027] Under the proposed rules funding portals could direct investors where to transmit funds or remit payment in connection with the purchase of securities offered and sold

[1019] *See* proposed Rule 402 of Regulation Crowdfunding.

[1020] *See* proposed Rule 402(b)(1) of Regulation Crowdfunding.

[1021] *See* proposed Rule 402(b)(5) of Regulation Crowdfunding.

[1022] *See* proposed Rule 402(b)(6) of Regulation Crowdfunding.

[1023] *See* proposed Rule 402(b)(7) of Regulation Crowdfunding.

[1024] *See* proposed Rule 402(b)(8) of Regulation Crowdfunding.

[1025] *See* proposed Rule 402(b)(9) of Regulation Crowdfunding.

[1026] *See* proposed Rules 301(c) and 402(b)(10) of Regulation Crowdfunding.

[1027] *See* proposed Rule 402(b)(11) of Regulation Crowdfunding.

in reliance on Section 4(a)(6).[1028] Similarly, a funding portal could direct a qualified third party to release proceeds of a successful offering to the issuer upon completion of the offering or to return investor proceeds when an investment commitment or offering is cancelled.[1029] These proposed rules would give both funding portals and entities with which they do business a measure of legal certainty that funding portals providing direction for funds to and from qualified third parties in compliance with the proposed rules would not constitute activity in violation of the statutory prohibitions on holding, managing, possessing or otherwise handling investor funds or securities.

b. Compliance Requirements

We are proposing to require that a funding portal implement written policies and procedures, reasonably designed to achieve compliance with proposed Regulation Crowdfunding and the rules and regulations thereunder, relating to its business as a funding portal.[1030] This requirement would provide a benefit to investors and funding portals alike, as written policies and procedures would aid, enhance and help to ensure consistent compliance with the proposed rules. Funding portals would incur costs associated with the requirement to develop their own procedures and implement written policies and procedures, as well as to update and enforce them, as set forth in the table above.

We are also proposing to require registered funding portals to comply with the requirements of the Bank Secrecy Act (BSA), including the reporting, recordkeeping and record retention requirements that apply to brokers.[1031] We recognize that the proposed rules would impose costs on funding portals to implement anti-money laundering (AML) procedures, as set forth in the table above; however, we believe that the proposed requirements provide important benefits. As discussed above,[1032] low-priced and privately-placed securities pose a money laundering risk because they are susceptible to market manipulation and fraud.[1033] Requiring funding portals to follow these AML procedures, in particular the requirement to file SARs, would help identify to law enforcement and regulators potentially fraudulent activity. These AML requirements would help therefore to protect market participants from illegal activity that could potentially infiltrate new online investment opportunities. Requiring the implementation of AML procedures would, in turn, provide potential investors with some degree of confidence that adequate protections against illegal activity exist for this new fundraising approach and would encourage more investors to participate, thus facilitating capital formation.

Additionally, the statute requires that intermediaries take such steps to protect the privacy of information collected from investors as we determine appropriate. We are proposing to implement this statutory provision by requiring a funding portal to comply with Regulation S–P, S–ID and Regulation S–AM, which are applicable to brokers.[1034] We believe that requiring a funding portal to comply with privacy obligations would help protect the personally identifiable information of investors and potential investors, consistent with how it is protected by other financial intermediaries. Compared with an alternative that we could have selected, that of developing a new privacy regime applicable only to funding portals, the proposed rules would introduce consistency between funding portals and broker-dealers with respect to privacy obligations. That will benefit investors by lowering their information search costs and reducing investor confusion. We recognize that the requirement would impose costs on funding portals to comply with the privacy requirements, as set forth in the table above; however, these additional privacy protections could give potential investors the confidence to participate in offerings made in reliance on Section 4(a)(6), which would facilitate capital formation and benefit the markets generally.

As a condition to exempting funding portals from the requirement to register as broker-dealers under Exchange Act Section 15(a)(1), Exchange Act Section 3(h)(1)(A) requires that registered funding portals remain subject to, among other things, the Commission's examination authority. Under the proposed rules, a funding portal would be required to permit the examination and inspection of all its business and business operations relating to its activities as a funding portal, including its premises, systems, platforms and records by Commission representatives and by representatives of the registered national securities association of which it is a member.[1035] Although funding portals would face time and compliance costs in submitting to Commission and registered national securities association examinations, inspections or investigations, and potentially responding to any issues identified, funding portals, investors and issuers would benefit from the enhanced compliance with regulations due to the oversight, as well as the sanctions or other disciplinary actions that may follow upon findings of violations through such inspections, examinations or investigations.

We are proposing to require a registered funding portal to maintain and preserve certain records relating to its business.[1036] The proposed rules would require, among other things, that the funding portal maintain and preserve certain books and records for a period of not less than five years and in an easily-accessible place for the first two years. Recordkeeping requirements help registrants with their compliance. They are a familiar and important element of the approach to broker-dealer regulation, as well as the regulation of investment advisers and others, and are designed to maintain the effectiveness of our inspection program for regulated entities, facilitating our review of their compliance with statutory mandates and with our rules. The proposed rule would assist us in evaluating a funding portal's compliance with the Securities Act Sections 4(a)(6) and 4A and the rules issued thereunder. Regulators would benefit from standardized recordkeeping practices for intermediaries because they would be able to perform more efficient, targeted inspections and examinations, and have an increased likelihood of identifying improper conduct at earlier stages of the inspection or examination.

Funding portals may incur one-time costs in establishing the systems necessary to comply with the proposed books and records requirements. We note, however, that the records required to be made and preserved under the proposed rules are those that would ordinarily be made and preserved in the

[1028] *See* proposed Rule 402(b)(12) of Regulation Crowdfunding.

[1029] *See* proposed Rule 402(b)(13) of Regulation Crowdfunding.

[1030] *See* proposed Rule 403(a) of Regulation Crowdfunding.

[1031] *See* proposed Rules 401(b), 403(b) and 404(f) of Regulation Crowdfunding. *See also* Section II.D.4 above.

[1032] *See* Section II.D.4.b above.

[1033] *See* FATF Typology, note 641.

[1034] *See* proposed Rule 403(c) of Regulation Crowdfunding.

[1035] *See* proposed Rule 403(d) of Regulation Crowdfunding.

[1036] *See* proposed Rule 404 of Regulation Crowdfunding. We note that registered brokers already are expected to comply with the books and records requirements in Exchange Act Rules 17a–3, 17a–4 and 17a–5 (17 CFR 240.17a–3, 17a–4 and 17a–5). Thus, all intermediaries, whether registered as brokers or as funding portals, would be required to make and preserve books and records.

ordinary course of business by a regulated broker engaging in these activities. We recognize that there may be a slight competitive advantage for funding portals over brokers to the extent that the proposed recordkeeping rule for funding portals is less burdensome for than the requirements applicable to brokers. At the same time, we believe that the proposed recordkeeping rule for funding portals is consistent with the narrow range of their activities. Our estimates of the costs associated with this requirement are set forth in the table above.

6. Insignificant Deviations

We are proposing to provide a safe harbor for issuers for certain insignificant deviations from a term, condition or requirement of Regulation Crowdfunding.[1037] The proposed safe harbor would provide that insignificant deviations from a term, condition or requirement of Regulation Crowdfunding would not result in a loss of the exemption, so long as the issuer relying on the exemption can show that: (1) The failure to comply was insignificant with respect to the offering as a whole; (2) the issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements of Regulation Crowdfunding; and (3) the issuer did not know of the failure to comply, where the failure to comply with a term, condition or requirement was the result of the failure of the intermediary to comply with the requirements of Section 4A(a) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer's offering.

Providing a safe harbor could impose costs on investors, issuers, funding portals and regulators, compared with the alternative of not providing a safe harbor, to the extent that issuers lessen the vigor with which they develop and implement systems and controls to achieve compliance with the requirements of Regulation Crowdfunding. We believe that limiting the proposed safe harbor to insignificant instances of non-compliance and requiring a good faith and reasonable attempt to comply with the requirements would mitigate these potential costs and would benefit issuers and funding portals by providing greater certainty regarding their reliance on the exemption. In the absence of a safe harbor, issuers may extend significantly more effort and more resources to satisfy the requirements of Regulation Crowdfunding or they may face greater uncertainty regarding their reliance on the exemption, which could discourage participation in this market, impacting efficiency and capital formation.

7. Relationship With State Law

Section 305 of the JOBS Act amended Securities Act Section 18(b)(4)[1038] to preempt the ability of states to regulate certain aspects of crowdfunding conducted pursuant to Section 4(a)(6). This statutory amendment would benefit issuers by making transactions made in reliance on Section 4(a)(6) less costly, because an issuer would not be required to register transactions with each state where it offers and sells securities in reliance on Section 4(a)(6). It also could benefit investors because these cost savings ultimately may be passed on to investors. Absent preemption of the states' registration requirements, an offering made through the Internet in reliance on Section 4(a)(6) and the proposed rules could result in an issuer potentially violating state securities laws. Recent evidence in donation-based and reward-based crowdfunding campaigns suggests that contributions are not exclusively local.[1039] The statutory preemption of state registration laws would reduce issuer uncertainty regarding the necessity of state registration, and it would eliminate the costs that would be associated with state registration. On the other hand, state registration laws may provide an additional layer of investor protection, and their preemption will remove a potential layer of review and may lead to increased levels of fraud. This potential negative effect of state law preemption, however, could be offset by some of the statutory requirements and the proposed rules that are designed to deter fraud, such as public disclosure, investment limits and the use of a registered intermediary.

8. Exemption From Section 12(g)

Proposed Rule 12g–6 provides that securities issued pursuant to an offering made under Section 4(a)(6) would be permanently exempted from the record holder count under Section 12(g). This proposal delays the more extensive Exchange Act reporting requirements until the issuer either sells securities in a registered transaction or registers a class of securities under the Exchange Act to reach a trading market. This allows an issuer to time the decision to become a reporting company without forcing it to become a reporting company through actions outside of its control (*e.g.,* secondary market trading). By conditioning the more burdensome reporting requirements on the decision to raise new capital or to actively seek a liquid trading market, the benefits of increased disclosure would scale with the scope of investment in the issuer, thus improving efficiency.

This proposal could, however, result in an unintended and potentially costly outcome. It is possible that an issuer that sells securities in reliance on Section 4(a)(6) could become an Exchange Act reporting company, but then deregister and go dark with potentially thousands of investors. For example, in an attempt to provide additional liquidity to its shareholders, an issuer could voluntarily register a class of securities under Exchange Act Section 12(g) so that the securities could be quoted in the over-the-counter market. The issuer would become subject to Exchange Act reporting requirements and would no longer be subject to the ongoing reporting requirements of Regulation Crowdfunding. If the issuer does not sell securities in a registered offering or trigger the asset and holder of record thresholds for mandatory Exchange Act registration in Section 12(g), the issuer could deregister its securities and stop all ongoing reporting obligations even if all the securities sold in reliance on Section 4(a)(6) remain outstanding.[1040] Given that securities-based crowdfunding could attract thousands of potential issuers, this is a possible outcome for some of these issuers. Under such an outcome, a significant number of investors in an issuer might be unable to obtain important information about that issuer, which could affect the liquidity and pricing of the securities these investors hold.

9. Disqualification

The statute and the proposed rules impose disqualification provisions under which an issuer would not be eligible to offer securities pursuant to Section 4(a)(6) and an intermediary would not be eligible to effect or participate in transactions pursuant to

[1037] *See* proposed Rule 502(a) of Regulation Crowdfunding.

[1038] 15 U.S.C. 77r(b)(4).

[1039] For example, in crowdfunding campaigns for early stage musical projects, the average distance between artist-entrepreneurs and contributors was 3,000 miles. *See* Ajay Agrawal, Christian Catalini and Avi Goldfarb, *The Geography of Crowdfunding,* NET Institute Working Paper No. 10–08 (Oct. 29, 2010), *available at http://ssrn.com/abstract=1692661.*

[1040] Although less likely, the same could happen if an issuer sells securities in reliance on Section 4(a)(6) and subsequently registers a class of securities under Exchange Act Section 12(b) in order to list its securities on a national securities exchange.

Section 4(a)(6).[1041] The proposed disqualification provisions for issuers are substantially similar to those imposed under Rules 262 of Regulation A and 506 of Regulation D,[1042] while the proposed disqualification provisions for intermediaries under Section 3(a)(39) are substantially similar to, while somewhat broader than, the provisions of Rule 262.

a. Issuers

The proposed rules should induce issuers to implement measures to restrict bad actor participation in offerings made in reliance on Section 4(a)(6). This should help reduce the potential for fraud in the market for such offerings, which should help reduce the cost of raising capital to issuers that rely on Section 4(a)(6), to the extent that disqualification standards lower the risk premium associated with the presence of bad actors in securities offerings. In addition, the requirement that issuers determine whether any covered persons are subject to disqualification might obviate the need for investors to do their own investigations and eliminate redundancies that might exist in otherwise separate investigations. This should help reduce information-gathering costs to investors, to the extent that issuers are at an advantage in accessing much of the relevant information and to the extent that issuers could do so at a lower cost than investors.

The proposed rules still would, however, impose costs on issuers, other covered persons and investors. If issuers are disqualified from relying on Section 4(a)(6) to make their offerings, they might experience increased costs in raising capital through alternative methods that do not require bad actor disqualification, if available, or alternative methods might be altogether unavailable. This could hinder potential investment opportunities for such issuers, with possible negative effects on capital formation. In addition, issuers and other covered persons may incur costs in connection with internal personnel changes that issuers may make to avoid the participation of those covered persons who are subject to disqualifying events. Issuers also might incur costs associated with restructuring share ownership positions to avoid having 20 Percent Beneficial Owners who are subject to disqualifying events. Finally, issuers might incur costs in connection with seeking waivers of disqualification from the Commission or determinations by other authorities that existing orders should not give rise to disqualification.

We anticipate that the reasonable care exception [1043] also would impose costs and benefits. In this regard, a reasonable care exception might encourage capital formation by eliminating any hesitation issuers might otherwise experience under a strict liability standard. However, such an exception also might encourage issuers to take fewer steps to inquire about offering participants than they would if a strict liability standard applied, increasing the potential for fraud in the market for offerings made in reliance on Section 4(a)(6). Nevertheless, some issuers, with regard to the exercise of reasonable care, might incur costs associated with conducting and documenting their factual inquiry into possible disqualifications. The lack of specificity in the rule, while providing flexibility to the issuer to tailor its factual inquiry as appropriate to a particular offering, might increase these costs because uncertainty could drive issuers to do more than necessary under the rule. Alternatively, it might reduce these costs because uncertainty might drive issuers to exert minimum effort in conducting and documenting a factual inquiry.

The requirement that issuers disclose matters that would have triggered disqualification, had they occurred after the effective date of proposed Regulation Crowdfunding,[1044] also would impose costs and benefits. The disclosure requirement would reduce costs associated with covered persons who would be disqualified under the proposed rules but for the fact that the disqualifying event occurred prior to the effective date of the rules. However, this approach would allow the participation of past bad actors, whose disqualifying events occurred prior to the effective date of the proposed rules, which could expose investors to the risks that arise when bad actors are associated with an offering. Nevertheless, investors would benefit by having access to such information that could inform their investment decisions. Issuers also may incur costs associated with the factual inquiry, preparing the required disclosure and making any internal or share ownership changes they may decide to make to avoid the participation of covered persons that trigger the disclosure requirement. Disclosure of triggering events also may make it more difficult for issuers to attract investors, and issuers may experience some or all of the impact of disqualification as a result.

We believe the inclusion of Commission cease-and-desist orders in the list of disqualifying events would not impose a significant, incremental cost on issuers and other covered persons because many of these groups might already be subject to disqualifying orders issued by the states, federal banking regulators and the National Credit Union Administration.[1045] The inclusion of such orders in the list of disqualifying events might change how settlement negotiations are conducted between respondents and the Commission, and the Commission could grant an appropriate waiver from disqualification.

Under the proposed rules, orders issued by the CFTC would trigger disqualification to the same extent as orders of the regulators enumerated in Section 302(d)(2)(B)(i) of the JOBS Act (*e.g.,* state securities, insurance and banking regulators, federal banking agencies and the National Credit Union Administration). We believe that including orders of the CFTC would result in the similar treatment, for disqualification purposes, of comparable sanctions. In this regard, we note that the conduct that would typically give rise to CFTC sanctions is similar to the type of conduct that would result in disqualification if it were the subject of sanctions by another financial services industry regulator. This should enable the disqualification rules to more effectively screen out bad actors.

As discussed above, the baseline for our economic analysis of proposed Regulation Crowdfunding, including the baseline for our consideration of the effects of the proposed rules on efficiency, competition and capital formation, is the situation in existence today, in which startups and small businesses seeking to raise capital through securities offerings must register the offer and sale of securities under the Securities Act unless they can comply with an existing exemption from registration under the federal securities laws. Relative to the current baseline, we believe that the disqualification provisions may not impose significant incremental costs on issuers and other covered persons because the proposed rules are substantially similar to the

[1041] *See* Section 302(d) of the JOBS Act; proposed Rule 503 of Regulation Crowdfunding. *See also* discussion in Section II.E.6 above.

[1042] *See Disqualification Adopting Release,* note 101.

[1043] *See* proposed Rule 503(b)(4) of Regulation Crowdfunding. *See also* Section II.E.6.a.iii above.

[1044] *See* proposed Rule 201(u) of Regulation Crowdfunding. *See also* Section II.E.6.a.v above.

[1045] *See Disqualification Adopting Release,* note 101.

disqualification provisions under existing exemptions.

b. Intermediaries

In implementing the statute, we are proposing to apply to intermediaries the disqualification provisions under Section 3(a)(39), rather than Rule 262 or the disqualification rules we are proposing for issuers. We believe that the standard of Section 3(a)(39) is already an established one among broker-dealers and their regulators and that, despite the differences, Section 3(a)(39) and Rule 262 are substantially similar in particular with regard to the persons and events they cover, their scope and their purpose.[1046] We believe that imposing any new or different standard, including Rule 262, only for those intermediaries that engage in crowdfunding transactions would likely create confusion and unnecessary burdens, as currently-registered broker-dealers and their associated persons would become subject to two distinct standards for disqualification. Consistent standards for all brokers and funding portals also would assist a registered national securities association in monitoring compliance and enforcing its rules.

The proposed rules would implement the statutory requirement for intermediaries by providing that a person subject to a statutory disqualification, as defined in Exchange Act Section 3(a)(39), may not act as, or be an associated person of, an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) unless so permitted by Commission rule or order. While this requirement would potentially reduce the number of intermediaries, we expect that it would strengthen investor protection by preventing bad actors from entering the securities-based crowdfunding market and by reducing the potential for fraud and other abuse.

As discussed above, the baseline for our economic analysis of proposed Regulation Crowdfunding, including the baseline for our consideration of the effects of the proposed rules on efficiency, competition and capital formation, is the situation in existence today, in which intermediaries intending to facilitate securities transactions are required to register with the Commission as broker-dealers under Exchange Act Section 15(a). Relative to the current baseline, we believe that the disqualification provisions might not impose significant incremental costs to brokers because the proposed rules are the same as the disqualification provisions that are already imposed on broker-dealers.

C. Request for Comment

Throughout this release, we have discussed the anticipated costs and benefits of the proposed rules and their potential impact on efficiency, competition and capital formation. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. We request comment from the point of view of issuers, investors and other market participants. With regard to any comments, we note that such comments are of particular assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

285. How similar or different is a securities-based crowdfunding offering from a non-securities-based crowdfunding offering? To what extent should we base the anticipated effects of the proposed rules on the experience of current crowdfunding platforms and their participants, including those based on rewards and donations? Should we expect the same incidence of success, failure, fraud and other outcomes when crowdfunding involves participants providing financing with an expectation of a monetary return on their investments? Would securities-based crowdfunding attract similar projects, ventures and capital seekers as other forms of crowdfunding? If not, why not, and what differences in the types of ventures, participants and outcomes might be expected?

286. How would securities issued in reliance on Section 4(a)(6) be valued? Would issuers and/or investors have sufficient financial sophistication or methods available to accurately assess the intrinsic risks associated with the issuance? If so, what mechanisms would help assure accurate pricing? If not, what specific challenges or issues would prevent issuers and/or investors from arriving at a price that reflects the intrinsic value of the offering?

287. How would investors who purchase securities in an offering in reliance on Section 4(a)(6) exit their investment? Once the securities are issued, investors would have to wait, except in certain circumstances, for one year before selling a security sold in a Section 4(a)(6) offering. At that time, how would existing security holders liquidate their positions? What is the likelihood that there would be a ready market for mature securities issued in reliance on Section 4(a)(6)? What entities or investors are likely to supply the liquidity, and what discounts, if any, are investors likely to face when exiting their investments? To what extent would, or should, liquidity provisions be built into the design of the security issues (*e.g.,* call provisions or self-liquidation features)?

288. How, and to what extent, would the collective knowledge of crowdfunding investors (*i.e.,* the ''wisdom of the crowd'') provide investor protections and mitigate potential fraud or unspecified offering risks at the time of issuance? Would ''the wisdom of the crowd'' provide ongoing investor protections to the community of securities-based crowdfunding investors? If so, how and to what extent?

289. Do the proposed rules require sufficient disclosure and educational requirements to help ensure that investors have a reasonable understanding of the risks and costs of investing in crowdfunding securities? Are the proposed disclosure and educational requirements sufficient for investors to understand: (1) The methods used for valuing securities issued in reliance on Section 4(a)(6), (2) potential complexity in the security design, or (3) risks of subsequent dilution of their investment? If not, what additional requirements would further mitigate the associated risks?

290. Should intermediaries be required to systematically collect and report information—to the Commission and/or publicly—about the progress, success and failures of issuers that relied on Section 4(a)(6) to offer and sell securities subsequent to initial financing? Would collecting and reporting such statistics help investors better understand the risks associated with securities-based crowdfunding investments with the passage of time? If so, what information should be reported, and to whom and in what manner should it be reported? Would a requirement to collect and maintain information about issuers that relied on Section 4(a)(6) after the completion of the offering be too burdensome for intermediaries?

291. Other than averting potential losses, what are the potential economic effects of limiting the investment size for any single investor to a maximum aggregate amount of $100,000? Would this reduce the incentive for some

[1046] *See* discussion in Section II.E.6.b above.

investors to participate in offerings in reliance on Section 4(a)(6), and if so, would this impede potential capital formation or the efficiency with which offerings can be made? Would this limit the ability of investors to appropriately diversify their securities-based crowdfunding investments? Please explain.

292. Would the permanent exemption of securities-based crowdfunding securities from the record holder count under Section 12(g) of the Exchange Act pose any significant risks to investors of successful ventures? For example, is it likely or possible that an issuers that offers and sells securities in reliance on Section 4(a)(6) could became subject to Exchange Act reporting, but then subsequently delist and go dark without regard to the number of record holders?

293. We estimated the costs for a broker to act as an intermediary in transactions conducted pursuant to Section 4(a)(6), and to engage in related broker activities, to be approximately $770,000 in the first year and approximately $270,000 each year thereafter. In making these estimates, we assumed that brokers would engage in particular activities in connection with these transactions, namely providing investment advice and recommendations, soliciting investors, and managing and handling customer funds and securities. Are our assumptions correct? If not, please explain. Are our estimates of the cost of doing business as a broker, in general, accurate? If not, please explain and provide relevant data.

294. We estimated the costs for a funding portal to act as an intermediary in transactions pursuant to Section 4(a)(6) to be approximately $417,000 in the first year, and approximately $90,000 each year thereafter. Are our estimates of the costs of doing business as a funding portal, and the assumptions behind these estimates, in general, accurate? If not, please explain and provide relevant data.

295. The Commission is interested in receiving comments, views, estimates and data concerning the following:

○ Expected size of the securities-based crowdfunding market (*e.g.,* number of offerings, number of issuers, number for funding portals, size of offerings, number of investors, etc., as well as information comparing these estimates to the current baseline);

○ Overall economic impact of the proposed rules;

○ Competitive effects on brokers of the development of funding portals; and

○ Any other aspect of the economic analysis.

IV. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[1047] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[1048] The titles for the collections of information are:

(1) ''Form ID'' (OMB Control Number 3235–0328);

(2) ''Form C'' (a proposed new collection of information);

(3) ''Form BD'' (OMB Control Number 3235–0012); and

(4) ''Regulation Crowdfunding—Intermediaries and Funding Portals'' (a proposed new collection of information).

In addition, the collections of information included under OMB Control Numbers 1506–0034 and 1506–0019, regarding the CIP and SAR requirements of the Department of Treasury, would be amended to reflect related burdens under proposed Rule 403(b) of Regulation Crowdfunding. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are applying for OMB control numbers for the proposed new collections of information in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13, and OMB has not yet assigned a control number to each new collection. Responses to these new collections of information would be mandatory.

B. Estimate of Issuers and Intermediaries

1. Issuers

The number, type and size of the issuers that would participate in securities-based crowdfunding transactions are uncertain, but data regarding current market practices may help identify the number and characteristics of potential issuers that may offer and sell securities in reliance on Section 4(a)(6).[1049] While it is not possible to predict the number of future offerings made in reliance on Section 4(a)(6), particularly because rules governing the process are not yet in place, for purposes of this analysis, we estimate that the number would be 2,300 offerings per year. We base this estimate on the number of issuers that conducted a Regulation D offering that had no revenues or less than $1 million in revenues.[1050] We believe those issuers would be similar in size to the potential issuers that may participate in securities-based crowdfunding, and we assume that each issuer would conduct one offering per year, raising an average of $100,000 per offering.

2. Intermediaries That Are Registered Brokers

We estimate that the proposed collections of information would apply to approximately 10 intermediaries per year that are not currently registered with the Commission and would choose to register as brokers to act as intermediaries for transactions made in reliance on Section 4(a)(6). However, we believe that, given the high cost that an unregistered entity would incur to register as a broker with us, compared with the lower cost of becoming a funding portal, unregistered entities generally would have less incentive to register as brokers than as funding portals.

We further estimate that approximately 50 intermediaries per year that are already registered as brokers with the Commission would choose to add to their current service offerings by also becoming crowdfunding intermediaries. These entities would not have to register anew with us, and if doing business with the public, would already be members of FINRA (the applicable national securities association registered under Exchange Act Section 15A). Because we do not have any data indicating the number of currently-registered brokers that would be interested in becoming crowdfunding intermediaries, we cannot estimate how many would choose to enter the crowdfunding market.[1051]

3. Funding Portals

We estimate that approximately 50 intermediaries per year would choose to register as funding portals during the first three years following effectiveness of the proposed rules. This estimate assumes that, upon effectiveness of the proposed rules, about 15% of the approximately 200 U.S.-based

[1047] 44 U.S.C. 3501 *et seq.*

[1048] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[1049] *See* Section III.A.4.a above for a discussion of the data regarding current market practices.

[1050] *See id.*

[1051] Similarly, we cannot estimate with any degree of certainty how many unregistered ''finders'' would potentially choose to enter the securities-based crowdfunding market. *See, e.g.,* Task Force on Private Placement Broker-Dealers, note 894 (stating that quantifying the number of ''finders'' that help small businesses to obtain sources of capital ''is an impossibility, since there is no effective measuring device.'').

crowdfunding portals [1052] currently in existence would participate in securities-based crowdfunding and that the number of crowdfunding portals would grow at 60% per year over the next three years.[1053] Therefore, we estimate that an average of approximately 50 respondents would register as funding portals annually.[1054] Of those 50 funding portals, we estimate that two would be nonresident funding portals. These estimates are based in part on current indications of interest expressed in responses to FINRA's voluntary interim form for funding portals.[1055]

C. Estimate of Burdens

1. Issuers

a. Form C: Offering Statement and Progress Update

Under the proposed rules, an issuer conducting a transaction in reliance on Section 4(a)(6) would file with us specified disclosures on a Form C: Offering Statement.[1056] An issuer also would file with us amendments to Form C to disclose any material change in the offer terms or disclosure previously provided to investors.[1057] Form C is similar to the Form 1–A offering statement under Regulation A, but it would require fewer disclosure items (*e.g.,* it would not require disclosure about the plan of distribution, the compensation of officers and directors, litigation or a discussion of federal tax aspects). We note that offerings made in reliance on Regulation A allow issuers to offer up to $5 million, involve review by the staff and require filings at the state level. In light of these factors, we expect that issuers seeking to raise capital pursuant to a Regulation A offering generally would be at a more advanced stage of development than issuers likely to raise capital pursuant to Section 4(a)(6), so the complexity of the required disclosure and, in turn, the burden of compliance with the requirements of proposed Form C would be significantly less than for Form 1–A.[1058] We estimate that the total burden to prepare and file the Form C, including any amendment to disclose any material change, would be approximately 60.00 hours, which is approximately 10 percent of the burden to prepare a Form 1–A for a Regulation A offering. We estimate that 75 percent of the burden of preparation would be carried by the issuer internally and that 25 percent would be carried by outside professionals[1059] retained by the issuer at an average cost of $400 per hour.[1060]

Under the proposed rules, the issuer also would be required to file with us regular updates regarding the progress of the issuer in meeting the target offering amount.[1061] The issuer would make the filing under cover of a Form C–U: Progress Update. The issuer would be required to disclose its progress in meeting the target offering amount. Form C–U is similar to a Form D Notice of Exempt Offering of Securities under Regulation D [1062] and a Form 2–A Report of Sales and Uses of Proceeds Pursuant to Rule 257 of Regulation A.[1063] Form C–U would require significantly less disclosure than the Form D and the Form 2–A, however, as it would only require disclosure of the issuer's progress in meeting the target offering amount, rather than compensation and use of proceeds disclosures or other information about the issuer and the offering. Thus, the complexity of the required disclosure and the burden to prepare and file Form C–U would be significantly less than for either Form D or Form 2–A. We estimate that the burden to prepare and file each progress update, which only has one disclosure requirement, would be 0.50 hours. We further estimate that an issuer would be required to file an average of two progress updates during each offering.[1064] Therefore, we estimate that an issuer's compliance with proposed Form C–U would result in an aggregate burden of 1.00 hours per issuer.[1065]

We estimate that compliance with the requirements of a Form C submitted in connection with transactions made in reliance on Section 4(a)(6) would require 138,000 burden hours (2,300 offering statements × 60.00 hours/offering statement) in aggregate each year, which corresponds to 103,500 hours carried by the issuer internally (2,300 offering statements × 60.00 hours/offering statement × 0.75) and costs of $13,800,000 (2,300 offering statements × 60.00 hours/offering statement × 0.25 × $400) for the services of outside professionals. We also estimate that compliance with the requirements of Form C–U submitted during an offering would require 2,300 burden hours (2,300 offering statements × 2 progress updates per offering × 0.50 hours per progress update) in aggregate each year. These estimates include the time and cost of collecting the information, preparing and reviewing disclosure, filing documents and retaining records. We derived the above estimates by estimating the average number of hours it would take an issuer to prepare and review the proposed disclosure requirements. In deriving our estimates, we recognize that the burdens likely would vary among individual issuers based on a number of factors, including the stage of development of the business and the number of years since inception of the business. We believe that some issuers would experience costs in excess of this average and some issuers may experience less than these average costs.

b. Form C–AR: Annual Report

Under the proposed rules, any issuer that sells securities in a transaction made pursuant to Section 4(a)(6) would be required to file annually with us an annual report on Form C–AR: Annual Report.[1066] Form C–AR would require

[1052] This estimate is based in part on an industry estimate that, as of April 2012, there were approximately 200 non-securities-based crowdfunding portals operating in the United States. *See* Massolution, note 861 at 16.

[1053] A worldwide survey of crowdfunding portals indicated that, in 2011, approximately 14.8% of the surveyed crowdfunding portals (mostly based in Europe) participated in ''equity-based'' crowdfunding. *Id.* Also, the total number of crowdfunding portals worldwide grew by an estimated 60% from 2011 to 2012. *Id.* at 13.

[1054] 200 U.S.-based crowdfunding portals × 15% (estimated percentage of crowdfunding portals that would participate in securities-based crowdfunding) = 30 funding portals that would participate in securities-based crowdfunding. Assuming 60% growth over three years, the number of registered funding portals would be 30 during the first year, 48 during the second year and 77 during the third year. The average number of registered funding portals over three years is (30 + 48 + 77)/3 = 52 funding portals (or approximately 50 funding portals per year).

[1055] *See* note 980.

[1056] *See* proposed Rule 203(a)(1) of Regulation Crowdfunding.

[1057] *See* proposed Rule 203(a)(2) of Regulation Crowdfunding.

[1058] We estimate the burden per response for preparing a Form 1–A to be 608.00 hours. *See* Form 1–A at 1.

[1059] For example, an issuer could retain an outside professional to assist in the preparation of the financial statements, but could decide to address the remaining disclosure requirements internally.

[1060] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This is the rate we typically estimate for outside legal services used in connection with public company reporting.

[1061] *See* proposed Rule 203(a)(3) of Regulation Crowdfunding.

[1062] We estimate the burden per response for preparing a Form D to be 4.00 hours. *See* Form D at 1.

[1063] We estimate the burden per response for preparing a Form 2–A to be 12.00 hours. *See* Form 2–A at 1.

[1064] *See* proposed Rule 203(a)(3) of Regulation Crowdfunding. The proposed rules would require an issuer to file a progress update after reaching one-half and 100 percent of the target offering amount.

[1065] We estimate that the burden of preparing Form C–U would be approximately 1/8 of the burden for Form D. Therefore, the aggregate burden per issuer would be 100 hour (2 progress updates × 0.50 hours/update).

[1066] *See* proposed Rule 202 of Regulation Crowdfunding.

disclosure substantially similar to the disclosure provided in the Form C: Offering Statement, except that offering-specific disclosure would not be required. Therefore, we estimate that the burden to prepare and file Form C–AR would be less than that required to prepare and file Form C. We estimate that compliance with proposed Form C–AR would result in a burden of 40.00 hours per response.[1067] We further estimate that 75 percent of the burden of preparation would be carried by the issuer internally and that 25 percent would be carried by outside professionals [1068] retained by the issuer at an average cost of $400 per hour.[1069]

We estimate that compliance with the requirements of Form C–AR after issuers sell securities pursuant to Section 4(a)(6) would require 92,000 burden hours (2,300 issuers × 40.00 hours/issuer) in the aggregate each year, which corresponds to 69,000 hours carried by the issuer internally (2,300 issuers × 40.00 hours/issuer × 0.75) and costs of $9,200,000 (2,300 issuers × 40.00 hours/issuer × 0.25 × $400) for the services of outside professionals.

c. Form C–TR: Termination of Reporting

Under the proposed rules, any issuer terminating its annual reporting obligations would be required to file a notice under cover of Form C–TR: Termination of Reporting to notify investors and the Commission that it no longer will file and provide annual reports pursuant to the requirements of Regulation Crowdfunding.[1070] We estimate that eight percent of the issuers that sell securities pursuant to Section 4(a)(6) would file a notice under cover of Form C–TR during the first year.[1071] The Form C–TR would be similar to the Form 15 that issuers file to provide notice of termination of the registration of a class of securities under Exchange Act Section 12(g) or to provide notice of the suspension of the duty to file reports required by Exchange Act Sections 13(a) or 15(d).[1072] Therefore, we estimate that compliance with the proposed Form C–TR would result in a similar burden as compliance with Form 15, a burden of 1.50 hours per response. We estimate that compliance with proposed Form C–TR would result in a burden of 276 hours (2,300 issuers × 0.08 issuers filing Form C–TR × 1.50 hours/issuer) in the aggregate during the first year for issuers terminating their reporting obligations.

d. Form ID Filings

Under the proposed rules, an issuer would be required to file specified disclosures with us on EDGAR.[1073] We anticipate that the majority of first-time issuers seeking to offer and sell securities in reliance on Section 4(a)(6) would not previously have filed an electronic submission with us and so would need to file a Form ID. Form ID is the application form for access codes to permit filing on EDGAR. The proposed rules would not change the form itself, but we anticipate that the number of Form ID filings would increase due to new issuers seeking to offer and sell securities in reliance on Section 4(a)(6). For purposes of this PRA discussion, we estimate that all of the issuers who would seek to offer and sell securities in reliance on Section 4(a)(6) would not have filed an electronic submission with us previously and would, therefore, be required to file a Form ID. As noted above, we estimate that approximately 2,300 issuers per year would seek to offer and sell securities in reliance on Section 4(a)(6), which would correspond to 2,300 additional Form ID filings. As a result, we estimate the additional annual burden would be approximately 345 hours (2,300 filings × 0.15 hours/filing).[1074]

2. Brokers and Funding Portals

a. Registration Requirements

i. Time Burden

The proposed rules would require intermediaries to register with us as either a broker or funding portal. We believe that some entities that may engage in crowdfunding pursuant to Section 4(a)(6) and the proposed regulation would already be registered as brokers. Therefore, this registration requirement would impose no new requirement on these entities and no additional burden for purposes of this PRA discussion. Entities that are not already registered as brokers may decide to register as brokers or as funding portals and to become members of a registered national securities association, pursuant to the proposed rules. We estimate that each year, approximately 10 entities may decide to register as brokers, and on average, approximately 50 entities may decide to register as funding portals by filing Form Funding Portal. In addition, we estimate that of those 50 entities that register as funding portals, two would be nonresident funding portals and subject to the additional requirements of completing Schedule C, hiring an agent for service of process in the United States and providing an opinion of counsel.

We estimate the burden for registering as a broker with us based upon the existing burdens for completing and filing Form BD.[1075] Consequently, we estimate that total annual burden hours required for all intermediaries, including brokers and funding portals, to register with us under the proposed rules would be approximately 165 hours (2.75 hours/respondent × (10 brokers + 50 funding portals)). In addition, those entities that register as nonresident funding portals would face an additional burden of half an hour to complete Schedule C, half an hour to hire an agent for the service of process, and one hour to provide an opinion of counsel. Consequently, we estimate that of the 50 registered funding portals, two would face the burden of an additional two hours to register.

We take into consideration that brokers that register to engage in crowdfunding transactions conducted in reliance on Section 4(a)(6) may eventually decide to withdraw their registration. Withdrawal requires the entity to complete and file with us a Form BDW.[1076] We further estimate that

[1067] We estimate that the burden of preparing the information required by Form C–AR would be approximately 2/3 of the burden for the Form C: Offering Statement in light of the fact that offering-specific disclosure would not be required and that the issuer may be able to update disclosure previously provided in the Form C: Offering Statement.

[1068] *See* note 1059.

[1069] *See* note 1060.

[1070] *See* proposed Rule 203(b)(2) of Regulation Crowdfunding.

[1071] For purposes of the PRA, we estimate that eight percent of issuers will not survive past their first year, based on a recent study that found that of a random sample of 4,022 new high-technology businesses started in 2004, 92.3% survived past their first year. *See* Kauffman Firm Survey, note 869 at 13.

[1072] We currently estimate the burden per response for preparing a Form 15 to be 1.50 hours. *See* Form 15 at 1.

[1073] *See* proposed Rules 201–203 of Regulation Crowdfunding.

[1074] We currently estimate the burden associated with Form ID is 0.15 hours per response. *See* Form ID at 1.

[1075] While it is likely that the time necessary to complete Form BD varies depending on the nature and complexity of the entity's business, we previously estimated that the average time necessary for a broker-dealer to complete and file an application for broker-dealer registration on Form BD would be approximately 2.75 hours. We also estimate that the time burden to register as a funding portal on Form Funding Portal would be, for purposes of this PRA discussion, the same, based upon the time required to complete and file Form BD because the information required for that form is similar.

[1076] The time necessary to complete Form BDW varies depending on the nature and complexity of the applicant's securities business. We previously estimated that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration, as required by Exchange Act Rule 15b6–1 (17 CFR 240.15b6–1).

approximately 500 broker-dealers withdraw from Commission registration annually [1077] and, therefore, file a Form BDW. Of them, we estimate that approximately one broker who had registered in order to facilitate crowdfunding transactions made in reliance on Section 4(a)(6) may decide to withdraw in each year following adoption of the rules.[1078] Therefore, the one broker-dealer that withdraws from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately one hour (one hour/respondent × one broker). Similarly, we estimate that approximately six funding portals may choose to withdraw from registration each year [1079] and that each withdrawal, as with Form BDW, would take one hour. This would result in an aggregate annual reporting burden of approximately six hours (one hour/respondent × 6 funding portals).

Newly-registered intermediaries would be required to also become members of FINRA or any other registered national securities association. Based on discussions with industry participants, we estimate that the burden associated with this requirement would be approximately 220 hours per intermediary that registers as a broker-dealer. We also assume that approximately one-half of that amount or 110 hours would be required of an intermediary registering as a funding portal. Consequently, we estimate that total annual burden hours required for all intermediaries, including brokers and funding portals, to register with FINRA or any other registered national securities association would be approximately 6,600 hours (220 hours/broker-dealer respondent × 10 brokers + 110 hours/funding portal respondent × 50 funding portals). For intermediaries who choose to hire a third party to assist in the membership process, we assume that the hours would be further reduced by at least one-half for a total of 3,300 hours.

Once registered, a broker must promptly file an amended Form BD when information it originally reported on Form BD changes or becomes inaccurate. Similarly, a registered funding portal must report to us amendments relating to its Form Funding Portal filing.[1080] Based on the number of amended Forms BD that we received from October 1, 2007 through September 30, 2012, we estimate that the total number of amendments that we would receive on Form BD from the 10 brokers that register under this proposed system would be approximately 34.[1081] Therefore, we estimate that the total additional annual burden hours necessary for broker-dealers to complete and file amended Forms BD would be approximately 11.2 hours (34 amended Forms BD per year × 0.33 hours, *i.e.,* 20 minutes, per amendment). Similarly, we estimate that the total annual burden hours for funding portals to complete and file amended Forms Funding Portal would be approximately 56.1 hours (50 funding portals × 3.4 amendments per year × 0.33 hours per amendment).

ii. Cost

We estimate that the initial registration cost for an intermediary to register with a national securities association would be approximately $10,000. This estimate is based on FINRA's current member application fee structure, which assesses fees depending on the size of the new member applicant. The current member application fee for broker-dealers with 1 to 10 associated registered persons is $7,500, and the fee for broker-dealers with 11 to 100 associated registered persons is $12,500.[1082] We expect that the size of funding portals that would register with FINRA would be similar, and therefore, our preliminary estimate of FINRA's application fee for funding portals is based on the above fees. The average of the two fees is ($7,500 + $12,500)/2 = $10,000. The total cost across all intermediaries would be approximately ($10,000/intermediary × (10 brokers + 50 funding portals) = $600,000. In addition, two intermediaries would face an additional cost of $25,130 to complete Schedule C, retain an agent for the service of process and provide an opinion of counsel to register as a nonresident funding portal.

In addition to the initial registration cost, we estimate that costs associated with completing a membership process with FINRA or any other registered national securities association would be approximately $3,450,000 across all intermediaries. Discussions with industry participants have indicated that most broker-dealers currently hire a third party consultant or attorney to assist in the membership process. Assuming that 90% of intermediaries (9 brokers and 45 funding portals) would employ an outside party, we estimate total costs charged by the outside party to be $1,575,000 ($50,000/third party assisting broker-dealers × 9 brokers + $25,0000/third party assisting funding portals × 45 funding portals).[1083] As indicated above, we assume that the intermediary's Chief Compliance Officer or person in a similar position would spend approximately 110 hours assisting in broker-dealer registration and 55 hours assisting in funding portal registration for a total approximate cost of $1,530,000 (110 hours/broker-dealer respondent × 9 brokers + 55 hours/funding portal respondent × 45 funding

[1077] This estimate is based on Form BDW data collected over the past five years and may be skewed as a result of the impact of the financial crisis on broker-dealers. For the past five fiscal years (from 10/1 through 9/30), the number of broker-dealers that withdrew from registration were as follows: 503 in 2008, 533 in 2009, 510 in 2010, 524 in 2011 and 428 in 2012. (503 + 533 + 510 + 524 + 428)/5 = 500.

[1078] As of September 30, 2012, there were 4,653 broker-dealers registered with the Commission. An average of 500 broker-dealers per year withdraw from registration, or 11% of the number of registered broker-dealers (500 withdrawing broker-dealers/4,653 registered broker-dealers). We are assuming that the same percentage of broker-dealers that withdraw from registration would apply to the population of registered broker-dealers participating in offerings in reliance on Section 4(a)(6). Of our estimate of 10 registered broker-dealers per year registering to participate in crowdfunding transactions in reliance on Section 4(a)(6), we estimate that approximately one broker-dealer per year (10 registered broker-dealers × 11%) would withdraw from registration.

[1079] We estimate that the percentage of registered funding portals participating in crowdfunding transactions in reliance on Section 4(a)(6) that would withdraw from registration annually would be the same as the percentage of broker dealers that withdraw from registration annually because of the similarity of the businesses. Of our estimate of 50 registered funding portals participating in crowdfunding transactions in reliance on Section 4(a)(6), we estimate that approximately six funding portals per year (50 registered funding portals × 11%) would withdraw from registration. For funding portals, a decision to withdraw registration would be required to be reported to us in the same way an amendment would; however, for brokers, withdrawal requires the fling of Form BDW.

[1080] We previously estimated that the average time necessary to complete an amended Form BD would be approximately 20 minutes. We estimate that an amendment to Form Funding Portal would take the same amount of time as an amendment to Form BD because the forms are similar.

[1081] We received 16,365, 17,247, 15,638, 15,491 and 13,271 amended Forms BD during the fiscal years ending 2008, 2009, 2010, 2011 and 2012, respectively, reflecting an average of 15,602 amendment filings per year (16,365 + 17,247 + 15,638 + 15,491 + 13,271)/5 years). As of September 30, 2012, there were 4,653 broker-dealers registered with the Commission. Therefore, we estimate that there are approximately 3.4 amendments (15,602 amended Forms BD/4,653 broker-dealers) per registered broker-dealer per year. We estimate that the 10 broker-dealers who register under this proposed regulation would submit, on aggregate, approximately 34 amendments per year.

[1082] *See* FINRA, *Revised Fees: Changes to Advertising, Corporate Financing, New Membership and Continuing Membership Application, Central Registration Depository and Branch Office Annual Registration Fees,* FINRA Regulatory Notice 12–32 (June 2012), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p127238.pdf.*

[1083] Discussions with industry participants indicated that third parties charge between $25,000 and $75,000, for an average of $50,000, to assist applicants seeking to register as broker-dealers. We assume that charges for intermediaries registering as funding portals would be approximately one-half of these costs, for an average of $25,000.

portals) × $441/hour.[1084] For the remaining 10% of intermediaries (1 broker and 5 funding portals) that would not employ an outside party to assist in the process, we estimate the total cost to be $340,000 ((220 hours/broker-dealer respondent × 1 broker + 110 hours/funding portal respondent × 45 funding portals) × $441/hour).

Intermediaries would face an ongoing cost to remain registered with a national securities association. We expect these costs would vary based on the size and profitability of the intermediary. The current FINRA annual assessment fee for members that are brokers having annual revenue of up to $1,000,000 is $1,200. In addition, FINRA members currently pay $150.00 for each principal and each representative of the member entity, up to five principals and representatives, and also pay $175 for the first 250 branch offices registered by the member. For purposes of the PRA, we assume that brokers acting as intermediaries as well as funding portals would have on average a total of five principals or representatives (or their equivalent), would maintain fewer than 250 branch offices, and would have annual revenues less than $1,000,000. Also for purpose of these estimates, we assume that the fees the national securities association would set for funding portals would be the same as those FINRA currently has set for members that are brokers. We do recognize, however, that the national securities association fees for funding portals may be lower than those currently in place for brokers, proportionate to funding portals' more limited scope of activity compared to brokers.[1085] Thus, we estimate that on average intermediaries would pay ongoing annual fees to a national securities association of $2,130, after the year they become members ((5 × $150.00) + $175 + $1,200 = $2,125). Nonresident funding portals, would also be subject to an annual cost of $130 to maintain an agent for service of process in the United States

b. Development of Intermediary Platform

i. Time Burden

The proposed rules are based on an intermediary developing an electronic platform to offer securities in reliance on Section 4(a)(6) to the public. A broker or funding portal that creates its initial platform in-house would incur an initial time burden associated with setting up systems functionality to comply with our proposed rules, and developing other platform capabilities and operations. Based on our discussions with potential intermediaries, we initially estimate that intermediaries would typically hire a team of approximately 4 to 6 developers that would work on all aspects of platform development, including, but not limited to, front-end programming, data management, systems analysis, communication channels, document delivery, and Internet security. To develop a platform, we estimate, based on our discussions with potential intermediaries, that intermediaries would spend an average of 1,500 hours for planning, programming and implementation.

As discussed above, we anticipate that 10 intermediaries would newly register as brokers, 50 intermediaries would be brokers that are already registered and 50 intermediaries would register as funding portals. It is difficult to estimate the number of intermediaries that would develop their platforms in-house, but if we assume that half of the 110 newly-registered intermediaries were to do so, then the total initial time burden would be 82,500 hours (55 intermediaries × 1,500 hours = 82,500 hours).

We estimate that annually updating the features and functionality of an intermediary's platform would require approximately 20% of the hours required to initially develop the platform, for an average burden of 300 hours per year. If we assume that half of the 110 newly-registered intermediaries updated their systems accordingly, the total ongoing time burden would be 16,500 hours per year (55 intermediaries × 300 hours = 16,500 hours).

ii. Cost

There would be a cost to developing a platform. Based on our discussions with potential intermediaries, we initially estimate that it would cost an intermediary approximately $250,000 to $600,000 to build an Internet-based crowdfunding portal and all of its basic functionality. Assuming that half of the 110 newly-registered intermediaries were to hire outside developers to build their platforms, the total initial cost would be $13,750,000 to $33,000,000 (55 intermediaries × $250,000 = $13,750,000; 55 intermediaries × $600,000 = $33,000,000). For purposes of the PRA, we are estimating the cost at $23,375,000.

We estimate that it would typically cost an intermediary approximately one-fifth of the initial development cost per year to use a third-party developer to update an Internet-based crowdfunding portal and all of its basic functionality, or $85,000 per year on average.[1086] If we assume that half of the 110 newly-registered intermediaries updated their systems accordingly, the total ongoing cost would be $4,675,000 per year (55 intermediaries × $85,000 = $4,675,000).

c. Measures to Reduce the Risk of Fraud

i. Time Burden

The proposed rules would require intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's platform complies with the requirements in Section 4A(b) and the related requirements in Regulation Crowdfunding.[1087] The proposed rules would require intermediaries to have a reasonable basis for believing that an issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform. For both requirements, an intermediary may reasonably rely on the representations of the issuer. For the purposes of the PRA, we expect that 100% of intermediaries would rely on the representations of issuers. This would impose an estimated time burden in the first year of five hours per intermediary to establish standard representations it would request from issuers, and 6 minutes per intermediary per issuer to obtain the issuer representation, which is consistent with estimates we have used for other regulated entities to obtain similar documentation, such as consents, from customers. Based on our estimate that there would be approximately 2,300 offerings per year, that each issuer would conduct one offering per year, and that there would be 110 intermediaries, we calculate that each intermediary would facilitate approximately 20 offerings per year (2,300 offerings/(10 newly registered broker-dealers + 50 previously registered broker-dealers + 50 funding portals) = 20.9). Therefore, we estimate that the total initial burden hours would be approximately 770 hours ((5 hours/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals) + (6 minutes/issuer × 20 issuers/intermediary × (10 newly-

[1084] The hourly rate estimate for a Chief Compliance Officer is taken from SIFMA Management Data.

[1085] *See* note 994.

[1086] Our estimate of the average initial external cost per intermediary to develop a crowdfunding platform is the average of the cited range of $250,000 to $600,000, or (($250,000 + $600,000)/)/)/2) = $425,000. One-fifth of the cost of $425,000 is ($425,000//5) = $85,000.

[1087] *See* proposed Rule 301(a) of Regulation Crowdfunding.

registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)).

We believe that the ongoing time burdens for this requirement would be approximately one hour per intermediary per year to review and check that the standard representations it requests from issuers remain appropriate, and 6 minutes per intermediary per issuer to obtain the representation. Therefore, we estimate that the ongoing total burden hours necessary for intermediaries to rely on the representations of the issuers would be approximately 330 hours per year ((1 hour/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)) + (6 minutes/issuer × 20 issuers/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals))).

ii. Cost

The proposed rules would require intermediaries to conduct a background and securities enforcement regulatory history check on each issuer and each officer, director or 20 Percent Beneficial Owner to determine whether the issuer or such person is subject to a disqualification. We anticipate that most intermediaries would employ third-parties that perform background checks, and for the purposes of this PRA discussion, we assume that 100% of intermediaries would use these third-party services rather than develop the capability to conduct background and securities enforcement regulatory history checks in-house. The cost to perform a background check is estimated to be between $200 and $500, depending on the nature and extent of the information provided.[1088] We recognize that some issuers would require more than one background check (*e.g.,* for officers or directors of the issuer), and we estimate that intermediaries would perform four background checks per issuer, on average. We base this number on that assumption that most crowdfunding issuers will be startups and small businesses with small management teams and few owners. Assuming that there is an average of approximately 2,300 offerings made in reliance on Section 4(a)(6) per year,[1089] the total estimated initial cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks would range from approximately $1,840,000 to $4,600,000 per year,[1090]or approximately $16,700 to $41,800 per intermediary per year.[1091] For purposes of the PRA, we will average the cost to $29,250 per intermediary per year.

We believe that, on an ongoing basis, intermediaries would continue to use third-party services to conduct background and securities enforcement regulatory history checks. We also believe that the total estimated ongoing cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks would be the same as the estimated initial cost, ranging from approximately $1,840,000 to $4,600,000 per year, or approximately $16,700 to $41,800 per intermediary per year. For purposes of the PRA, we will average the cost to $29,250 per intermediary per year.

d. Account Opening: Accounts and Electronic Delivery

i. Time Burden

The proposed rules would provide that no intermediary or associated person of an intermediary could accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and consented to electronic delivery of materials.[1092] For the purposes of the PRA, we expect that the functionality required to require an investor to open an account with an intermediary and obtain consents would result in an initial time burden of approximately 10 hours per intermediary in the first year. Therefore, we estimate that the total initial burden hours necessary for this functionality would be approximately 1,100 hours (10 hours/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)).

We believe that the ongoing time burdens for this requirement would be significantly less than the initial time burden, and thus we are estimating approximately two hours per intermediary per year, to review and check the related processes. Therefore, we estimate that the ongoing total burden hours necessary for this functionality would be approximately 220 hours per year (2 hours/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)).

ii. Cost

To the extent an intermediary uses a third party to establish account opening functionality, the initial costs relevant to this requirement would be incorporated into the cost of hiring a third party to develop the platform, discussed below in Section IV.C.2.f.

We do not believe that there are any ongoing costs relevant to this requirement.

e. Account Opening: Educational Materials

i. Time Burden

The proposed rules would require intermediaries to provide educational materials to investors,[1093] to help ensure that investors have a baseline understanding of the risks and costs of investing in securities offered and sold in reliance on Section 4(a)(6). Given that the intermediary would determine what electronic format is effective in communicating the requisite contents of the educational material, the expected cost for intermediaries to develop the educational material is expected to vary widely and are difficult to estimate. For the purposes of the PRA, we are assuming that half of the intermediaries would develop their educational materials in-house, which would include online presentations and written documents, and that the other half would employ third-parties to produce professional-quality online video presentations. We estimate that, to develop their non-video educational materials in-house, each intermediary would incur an initial time burden of approximately 20 hours. Therefore, the total initial burden would be approximately 2,200 hours (110 intermediaries × 20 hours/intermediary).

Assuming that half of the intermediaries would develop their

[1088] *See, e.g.,* A Matter of Fact, *Background Check FAQ: Frequently Asked Questions, available at http://www.amof.info/faq.htm* (Matter of Fact is a background check provider accredited by the National Association of Professional Background Screeners and the Background Screening Credentialing Council and states that the cost for a comprehensive background check is $200 to $500).

[1089] Because crowdfunding transactions in reliance on Section 4(a)(6) are a new approach to capital formation, it is difficult for us to accurately estimate an average number of offerings per year. As stated above, we assume that there would be approximately 2,300 offerings made in reliance on Section 4(a)(6) per year.

[1090] 2,300 securities-based offerings made in reliance on Section 4(a)(6) per year × ($200 to $500 per background and securities enforcement regulatory history check) × 4 checks per offering = $1,840,000 to $4,600,000 per year.

[1091] $1,840,000/110 intermediaries = approx. $16,700 per intermediary; $4,600,000/110 intermediaries = approx. $41,800 per intermediary.

[1092] *See* proposed Rule 302(a) of Regulation Crowdfunding.

[1093] *See* proposed Rule 302(b) of Regulation Crowdfunding.

educational materials in-house, we expect that these intermediaries also would update their educational materials in-house, as needed. We estimate that to update their educational materials in-house, each intermediary would incur an ongoing time burden of approximately 10 hours per year. Therefore, the total ongoing burden would be approximately 1,100 hours per year (110 intermediaries × 10 hours/intermediary).

ii. Cost

As stated above, for the purposes of this PRA discussion, we assume that half of the intermediaries would employ third-party companies to produce professional-quality video materials instead of developing materials in-house. Public sources indicate that the typical cost to produce a professional corporate training video ranges from approximately $1,000 to $3,000 per production minute.[1094] Based on discussions with industry participants, we assume that, on average, each intermediary would produce a series of short educational videos that would cover all of the requirements of the proposed rules, and the video material would be 10 minutes long in total. Based on this assumption, we estimate that the average initial cost for an intermediary to develop and produce educational materials would range from approximately $10,000 to $30,000. The total initial cost across all 110 intermediaries per year would be $1,100,000 to $3,300,000. For purposes of the PRA, we will average the cost to $20,000 per intermediary per year. We note that the estimated initial cost may be significantly lower, because not all intermediaries that outsource the development of educational materials may choose to produce educational videos, while others may produce videos of shorter length.

We estimate that, on an ongoing basis, when using a third-party company to update their video educational materials, each intermediary would spend approximately half of the initial average cost. We estimate, therefore, that the average ongoing annual cost for an issuer to update its video educational materials would range from approximately $5,000 to $15,000 and that the total ongoing annual cost across all intermediaries would range from approximately $550,000 to $1,650,000 per year. For purposes of the PRA, we will average the cost to $10,000 per intermediary per year.

f. Account Opening: Promoters

i. Time Burden

The proposed rules would require an intermediary, at the account opening stage, to disclose to investors that any person who receives compensation to promote an issuer's offering, or who is a founder or employee of an issuer engaging in promotional activities on behalf of the issuer, must clearly disclose the receipt of compensation and his or her engagement in promotional activities on the platform.[1095] For purposes of the PRA, we expect that this requirement would result in an estimated time burden of five hours per intermediary in the first year, to prepare this particular disclosure and incorporate it into the account opening process. Therefore, we estimate that the total initial burden hours necessary for intermediaries to comply with this requirement would be approximately 550 hours (5 hours/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)).

We believe that the ongoing time burdens for this requirement would be approximately one hour per intermediary per year to review and check that the disclosures remain appropriate. Therefore, we estimate that the ongoing total burden hours necessary for intermediaries to comply with this requirement would be approximately 110 hours per year (1 hour/intermediary × (10 newly-registered broker-dealers + 50 previously-registered broker-dealers + 50 funding portals)).

ii. Cost

To the extent an intermediary uses a third party to develop the functionality for this requirement, the initial costs relevant to this requirement would be incorporated into the cost of hiring a third party to develop the platform, discussed below in subsection IV.C.2.f.

We do not believe that there are any ongoing costs relevant to this requirement.

g. Issuer Disclosures To Be Made Available

i. Time Burden

The proposed rules would require an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information, until the offer and sale of securities is completed or cancelled.[1096]

For purposes of the PRA, our estimate of the hourly burdens related to the public availability of the issuer information is included as part of our estimate of the hourly burdens associated with overall platform development, as discussed above in Section IV.C.2.b. The platform functionality would include not only the ability to display, upload and download issuer information as required under the proposed rules, but also the ability to provide users with required online disclosures, as discussed below.

We recognize that, over time, intermediaries may need to update their systems that allow issuer information to be uploaded to their platforms. We do not expect a significant ongoing burden for providing issuer disclosures, primarily because the functionality required for required issuer disclosure information to be uploaded is a standard feature offered on many Web sites and would not require frequent or significant updates.

ii. Cost

We do not expect a significant ongoing cost for providing issuer disclosures, primarily because the functionality required to upload required issuer disclosure information is a standard feature offered on many Web sites and would not require frequent updates. Because we are including the burdens that are associated with providing issuer disclosures as part of our estimates for overall platform development, we discuss our cost estimates for ongoing platform development and updates there.

h. Other Disclosures to Investors and Potential Investors

i. Time Burden

Intermediaries would be required to implement and maintain systems to comply with the information disclosure, communication channels, and investor notification requirements, including providing disclosure about compensation at account opening, obtaining investor acknowledgements to confirm investor qualifications and review of educational materials, providing investor questionnaires, providing communication channels with third parties and among investors,

[1094] *See, e.g.,* Lee W. Frederiksen, *What Is the Cost of Video Production for the Web?,* Hinge Marketing, *available at http://www.hingemarketing.com/library/article/what-is-the-cost-of-video-production-for-the-web.*

[1095] *See* proposed Rule 302(c) of Regulation Crowdfunding.

[1096] *See* proposed Rule 303(a) of Regulation Crowdfunding.

notifying investors of investment commitments, confirming completed transactions and confirming or reconfirming offering cancellations. Based on our discussions with industry participants, these functionalities would generally be part of the overall platform development process and costs. We discuss platform development costs above, which would include developing the functionality that would allow intermediaries to comply with disclosure and notification requirements.[1097]

We do not expect a significant ongoing burden for providing disclosures, as required by the proposed rules, because the functionality required to provide information and communication channels would likely not require frequent updates. We incorporate the total burden to update the required functionality for processing issuer disclosure and investor acknowledgment information in the total burden estimates discussed above relating to platform development.[1098]

ii. Cost

We recognize that some intermediaries may add the required functionality for processing issuer disclosure and investor acknowledgments by using a third-party developer. We also do not expect there to be a significant ongoing cost for developing the functionality to process these disclosures and acknowledgments, primarily because this functionality would likely not require frequent updates by third-party developers. The total cost to add the required functionality for processing issuer disclosure and investor acknowledgments, as well as to update the required functionality for processing issuer disclosure and investor acknowledgments, is incorporated into the total cost estimates discussed above relating to platform development.[1099]

i. Maintenance and Transmission of Funds

i. Time Burden

Intermediaries would be required to comply with the requirements related to the maintenance and transmission of funds. A registered broker would be required to comply with the requirements of Rule 15c2–4 of the Exchange Act (Transmission or Maintenance of Payments Received in Connection with Underwritings).[1100] A registered funding portal would be required to enter into a written agreement with a qualified third party to hold its client funds, or to open a bank account for the exclusive benefit of the investors and issuer, and it also would be required to send directions to the qualified third party depending on whether an investing target is met or an investment commitment or offering is cancelled. For purposes of the PRA, we are providing an estimate for the time that a funding portal would need to enter into on an initial basis, and review and update on an ongoing basis, a written agreement with the qualified third party. We expect that the burden associated with the Web site functionality required to send directions to third parties would be included as part of the platform development discussed above. Based on discussion with industry participants, we estimate that funding portals would incur an initial burden of approximately 20 hours each to comply with these requirements, or 1,000 hours total (20 hours per funding portal × 50 funding portals = 1,000 hours).

We expect that, on an ongoing basis, a registered funding portal would have to periodically review and update its written agreement with a bank or other third party to hold its client funds. A registered funding portal also would be required to send directions on an ongoing basis to a third party depending on whether an investing target is met or an investment commitment or offering is cancelled. Based on discussion with industry participants, we estimate that funding portals would incur an ongoing annual burden of approximately 5 hours each to comply with these requirements, or 250 hours total (5 hours per funding portal × 50 funding portals = 2,500 hours).

ii. Cost

For purposes of the PRA, we are not providing any cost estimate for this requirement, because we expect that the cost associated with developing the functionality required to send instructions to third parties would be included as part of the platform development discussed above.[1101]

j. Fidelity Bond

i. Time Burden

Funding portals would be required to comply with the requirements in proposed Rule 400(f) related to obtaining and maintaining fidelity bond coverage. A registered funding portal would be required to enter into a written agreement with a fidelity bond provider to obtain the required coverage. Based on discussion with industry participants, we estimate that funding portals would incur an initial burden of approximately 15 hours each to comply with these requirements, or 750 hours total (15 hours per funding portal × 50 funding portals = 750 hours).

We expect that, on an ongoing basis, a registered funding portal would have to periodically review and update its fidelity bond coverage. We estimate that funding portals would incur an ongoing burden of approximately 5 hours each to comply with these requirements, or 250 hours total (5 hours per funding portal × 50 funding portals = 2,500 hours).

ii. Cost

We estimate the initial costs for the fidelity bond to be $825. We estimate that on an ongoing basis, the costs would be $825.

k. Compliance: Policies and Procedures

i. Time Burden

Based on discussion with industry participants, we estimate that a funding portal would spend approximately 40 hours to establish written policies and procedures to achieve compliance with the JOBS Act and the rules and regulations thereunder, as required under the proposed rules. This would result in an aggregate initial recordkeeping burden of 2,000 hours (40 hours × 50 funding portals).

We estimate that, on an ongoing basis, funding portals would spend approximately 5 hours per year updating, as necessary, the policies and procedures required by the proposed rules. This would result in an aggregate ongoing recordkeeping burden of 250 hours (5 hours × 50 funding portals).

ii. Cost

As we anticipate that funding portals would comply with this requirement by using internal personnel and internal information technology resources integrated into their platforms, we estimate that there would be no costs related to this requirement. To the extent a funding portal employs a consultant or attorney to establish written policies and procedures, these costs would be incorporated into the

[1097] *See* Section IV.C.2.b.i above.

[1098] *See* Section IV.C.2.b.i above.

[1099] *See* Section IV.C.2.b above.

[1100] 17 CFR 240.15c2–4. For purposes of this PRA discussion, the burdens associated with this rule, as well as for any other rule to which brokers are subject regardless of whether they engage in transactions pursuant to Section 4(a)(6), are not addressed here; rather, they are included in any OMB approvals for the relevant rule. Rule 15c2–4, however, does not include any information collection requests for purposes of the PRA, and so there is no relevant approval or control number from OMB for this rule.

[1101] *See* Section IV.C.2.f above.

cost of hiring a third party to assist in the membership process.

l. Compliance: Anti-Money Laundering

While the proposed CIP and the SAR Requirements, and other BSA requirements, impose burdens on relevant entities, the proposed rules do not impose any burden on funding portals in addition to that already imposed on broker-dealers by those requirements. The burden on funding portals, would be the same as broker-dealers, and would be included within those estimates provided by Treasury,[1102] so we do not discuss those burdens here, and we would not be requesting any separate approval from OMB to impose the burdens associated with the information collection requirements to comply with the CIP and SAR Requirements.

m. Compliance: Privacy

i. Time Burden

We estimate that the initial time burden of the requirement related to the proposed Privacy Rules, including Regulation S–P, S–AM and S–ID, would be negligible in light of the limited activities of funding portals, so we discuss it below only in relation to ongoing time burdens.

Regulation S–P would require a funding portal to provide notice to investors about its privacy policies and practices; describes the conditions under which a broker may disclose nonpublic personal information about investors to nonaffiliated third parties; and provides a method for investors to prevent a funding portal from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to certain exceptions. For funding portals, we expect that the privacy and opt-out notices would be delivered electronically, which reduces the delivery burden compared to paper delivery.

Based on the proposed requirements, we estimate that all 50 funding portals would be subject to the requirements of Regulation S–P under the proposed regulation. In developing an estimate we have considered: (1) The minimal recordkeeping burden imposed by Regulation S–P (Regulation S–P has no recordkeeping requirement, and records relating to customer communications already must be made and retained pursuant to other Commission rules); (2) the summary fashion in which information must be provided to investors in the privacy and opt-out notices required by Regulation S–P (the model privacy form adopted by the Commission and the other agencies in 2009, designed to serve as both a privacy notice and an opt-out notice, is only two pages); and (3) the availability of the model privacy form and online model privacy form builder. Given these consideration and with the aid of our institutional knowledge, we estimate that each funding portal would spend, on an ongoing basis, an average of approximately 12 hours per year complying with the information collection requirement of Regulation S–P, for a total of approximately 600 annual burden-hours (12 hours/respondent × 50 funding portals).

Regulation S–AM would require funding portals to provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing before a receiving affiliate may make marketing solicitations based on the communication of certain consumer financial information from the broker. Based on the discussion with industry participants, we estimate that approximately 20 funding portals would have affiliations that would subject them to the requirements of Regulation S–AM under the proposed regulation, and that they would require an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 20 hours (1 hour/respondent × 20 funding portals). We also estimate that these 20 funding portals would be required to provide notice and opt-out opportunities to consumers pursuant to the requirements of Regulation S–AM and that they would incur an average first-year burden of 18 hours in doing so, for a total estimated first-year burden of 360 hours (18 hours/respondent × 20 funding portals). We estimate that funding portals would incur a continuing ongoing burden related to the requirements of Regulation S–AM to provide notice and opt-out opportunities of approximately 4 hours per respondent per year to create and deliver notices to new investors and record any opt-outs that are received on an ongoing basis, for a total of approximately 80 annual burden-hours (4 hours/respondent × 20 funding portals).[1103]

Under our proposed rules, Regulation S–ID generally would require funding portals to develop and implement a written identity theft prevention program that is designed to detect, prevent and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. Based on our institutional knowledge, we estimate that the initial burden for funding portals to comply with the applicable portions of proposed Regulation S–ID would be (1) 25 hours to develop and obtain board approval of a program; (2) 4 hours to train staff; and (3) 2 hours to conduct an initial assessment of relevant accounts, for a total of 31 hours. We estimate that all 50 funding portals would incur these initial time burdens, resulting in an aggregate time burden of 1,550 hours ((25 + 4 + 2 hours/respondent) × 50 funding portals).

With respect to the requirements of Regulation S–ID, we estimate that the ongoing burden per year would include: (1) 2 hours to periodically review and update the program, review and preserve contracts with service providers and review and preserve any documentation received from service providers; (2) 4 hours to prepare and present an annual report to a compliance director; and (3) 2 hours to conduct periodic assessments to determine if the entity offers or maintains covered accounts, for a total of 8 hours, of which we estimate 7 hours would be spent by internal counsel and 1 hour would be spent by a compliance director. We estimate that 50 funding portals would incur these ongoing time burdens, making the total ongoing burden 400 hours (8 hours/respondent × 50 funding portals).

ii. Cost

We estimate that, for PRA purposes, there is no cost associated with the requirements of Regulation S–P, Regulation S–AM or Regulation S–ID.

n. Records To Be Made and Kept by Funding Portals

i. Time Burden

All funding portals would be required to make and keep records related to their activities to facilitate transactions in reliance on Section 4(a)(6) and the related rules. These proposed books and records requirements are based generally on Exchange Act Rules 17a–3 and 17a–4, which apply to broker-dealers. To estimate the initial burden for funding portals, we examined the current annual burdens of Rules 17a–3 and 17a–4.[1104]

[1102] *See* OMB File No. 1506–0034 for the CIP requirement and OMB File No. 1506–0019 for the SAR requirement.

[1103] The average (blended) annual time burden per respondent for Regulation S–AM requirements would be 10 hours ((18 hours in the first year/3 years) + 4 hours/year continuing burden = 10 hours per year).

[1104] *See* Collections of Information for Exchange Act Rules 17a–3 and 17a–4 (OMB Control Nos. 3235–0033 and 3235–0279), Office of Information and Regulatory Affairs, Office of Management and Budget, *available at http://www.reginfo.gov/public/do/PRAMain.*

The most recently approved annual recordkeeping burden for broker-dealer compliance with Rule 17a–3 is currently estimated at 394.16 hours per respondent, and the most recently approved annual recordkeeping burden for broker-dealer compliance with Rule 17a–4 is currently estimated at 254 hours per respondent.

Given the more limited scope of a funding portal's business as compared to that of a broker, the more limited scope of the proposed books and records rules, and the fact that funding portals would make, deliver and store records electronically (as required), we expect the burden of the proposed rules may be less than that of Rules 17a–3 and 17a–4. For the purposes of the PRA, we assume that the recordkeeping burden, on average, for a funding portal to comply with the proposed rules would be 50% of the burdens of a broker-dealer to comply with Rules 17a–3 and 17a–4 (although 50% may turn out to be a high estimate). We expect the ongoing recordkeeping burden for funding portals would be the same as the initial burden because maintaining such records would be consistent each year. Therefore, we estimate the initial burden to be approximately 325 hours per respondent,[1105] or 16,250 hours total (325 hours/respondent × 50 respondents = 16,250 hours). We estimate that the ongoing recordkeeping burden for funding portals would be approximately 325 hours per respondent, or 16,250 hours total (325 hours/respondent × 50 funding portals).

ii. Cost

For purposes of the PRA, we assume that a funding portal's initial recordkeeping cost associated with making and keeping records by a funding portal would not be significantly different from the ongoing recordkeeping cost because maintaining such records would be consistent each year. The most recently approved annual recordkeeping cost for broker-dealer compliance with Rule 17a–3 is currently estimated at $5,706.67 per respondent. These ongoing recordkeeping costs reflect the costs of systems and equipment development. The most recently approved annual recordkeeping cost for broker-dealer compliance with Rule 17a–4 is currently estimated at $5,000 per respondent.

Given the more limited scope of a funding portal's business as compared to that of a broker, the more limited scope of the proposed books and records rules, and the fact that funding portals would make, deliver (as required) and store records electronically, we expect the annual recordkeeping cost of the proposed rule requirements may be less than that of Rules 17a–3 and 17a–4. For purposes of the PRA, we assume that the annual recordkeeping cost on average for a funding portal to comply with the proposed requirements that records be made and kept would be about 50% less than burdens of a broker-dealer to comply with Rules 17a–3 and 17a–4. We expect the initial recordkeeping cost for funding portals, therefore, to be approximately $5,350 per respondent,[1106] or $267,500 total ($5,350 per respondent × 50 respondents = $267,500).

We also estimate that the ongoing recordkeeping cost for funding portals would be approximately $5,350 per respondent, or $267,500 total ($5,350 per respondent × 50 respondents = $267,500).

D. Collections of Information Are Mandatory

The collections of information required under proposed Rules 201 through 203 would be mandatory for all issuers. The collections of information required under proposed Rules 300 through 304 would be mandatory for all intermediaries. The collections of information required under proposed Rules 400 through 404 would be mandatory for all funding portals.

E. Confidentiality

Responses on Form C, Form C–A, Form C–U, Form C–AR and Form C–TR would not be confidential. Responses on Form ID would be kept confidential by the Commission, subject to a request under the Freedom of Information Act.[1107] Responses on Form Funding Portal would not be confidential.

F. Retention Period of Recordkeeping Requirements

Issuers are not subject to recordkeeping requirements under proposed Regulation Crowdfunding. Intermediaries that are brokers would be required to retain records and information relating to proposed Regulation Crowdfunding for the required retention periods specified in Exchange Act Rule 17a–4.[1108] Intermediaries that are funding portals would be required to retain records and information under proposed Regulation Crowdfunding for the required retention periods specified in proposed Rule 404.[1109]

G. Request for Comment

The Commission invites comment on all of the above estimates. In particular, the Commission requests comment on the assumptions and estimates described above with respect to how issuers and intermediaries, especially funding portals, would comply with the proposed information collection requests. Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission requests comment in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of our functions, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the proposed collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the proposed collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–09–13. Requests for materials submitted to OMB by the Commission, with regard to these collections of information, should be in writing, with reference to File No. S7–09–13, and they should be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[1105] 394.16 hours (recordkeeping burden for Rule 17a–3) + 254 hours (recordkeeping burden for Rule 17a–4) = 648.16 hours. 648.16 hours/2 = 324.08 hours.

[1106] $5,706.673 (recordkeeping cost for Rule 17a–3) + $5,000 (recordkeeping cost for Rule 17a–4) = $10,706.673 multiplied by 50%.

[1107] 5 U.S.C. 552. The Commission's regulations that implement the Freedom of Information Act are at 17 CFR 200.80 *et seq.*

[1108] 17 CFR 240.17a–4.

[1109] *See* proposed Rule 404 of Regulation Crowdfunding.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[1110] the Commission must advise the OMB as to whether the proposed rules constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' when, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rules on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VI. Initial Regulatory Flexibility Act Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[1111] regarding proposed Regulation Crowdfunding.

A. Reasons for the Proposed Actions

The proposed regulation is designed to implement the requirements of Title III. Title III added Securities Act Section 4(a)(6), which provides a new exemption from the registration requirements of Securities Act Section 5 for crowdfunding transactions, provided the transactions are conducted in the manner set forth in new Securities Act Section 4A. Section 4A includes requirements for issuers that offer or sell securities in reliance on the crowdfunding exemption, as well as for persons acting as intermediaries in those transactions. The proposed rules prescribe requirements governing the offer and sale of securities in reliance on Section 4(a)(6), and provide a framework for the regulation of registered funding portals and brokers that act as intermediaries in the offer and sale of securities in reliance on Section 4(a)(6).

B. Objectives

As discussed above, the crowdfunding provisions of the JOBS Act, which we would implement through this proposed regulation, were designed to help alleviate the funding gap and accompanying regulatory concerns faced by small businesses by making relatively low dollar offerings of securities less costly and by providing crowdfunding platforms a means by which to facilitate the offer and sale of securities without registering as brokers, with a framework for regulatory oversight to protect investors.

C. Small Entities Subject to the Proposed Rules

For purposes of the Regulatory Flexibility Act, under our rules, an issuer (other than an investment company) is a ''small business'' or ''small organization'' if it has total assets of $5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed $5 million.[1112] We believe that many issuers seeking to offer and sell securities in reliance on Section 4(a)(6) would be at a very early stage of their business development and would likely have total assets of $5 million or less. Also, to qualify for the exemption under Section 4(a)(6), the amount raised by an issuer must not exceed $1 million in a 12-month period. Therefore, we estimate that all issuers who offer or sell securities in reliance on the exemption would be classified as a ''small business'' or ''small organization.''

Paragraph (a) of Rule 0–10 under the Exchange Act provides that, for purposes of the Regulatory Flexibility Act, ''[w]hen used with reference to a broker or dealer, the Commission has defined the term ''small entity'' to mean a broker or dealer (''small broker-dealer'' that: (1) Had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.'' [1113] Currently, based on FOCUS Report [1114] data, there are 871 broker-dealers that are classified as ''small'' entities for purposes of the Regulatory Flexibility Act.[1115] We apply comparable criteria to funding portals that would register under the proposed regulation. Based on discussions with industry participants, we estimate that, of the anticipated 50 funding portals we expect to register under the proposed regulation, 30 would be classified as ''small'' entities for purposes of the Regulatory Flexibility Act.

D. Projected Reporting, Recordkeeping and other Compliance Requirements

As discussed above, the proposed regulation includes reporting, recordkeeping and other compliance requirements. In particular, the proposed regulation would impose certain disclosure requirements on issuers offering and selling securities in a transaction relying on the exemption provided by Section 4(a)(6). The proposed rules would require that issuers relying on the exemption provided by Section 4(a)(6) file with the Commission certain specified information about the issuer and the offering, including information about the issuer's contact information; directors, officers and certain beneficial owners; business and business plan; current number of employees; financial condition; target offering amount and the deadline to reach the target offering amount; use of proceeds from the offering and price or method for calculating the price of the securities being offered; ownership and capital structure; material factors that make an investment in the issuer speculative or risky; indebtedness; description of other offerings of securities; and transactions with related parties. Issuers also would be required to file updates with the Commission to describe the progress of the issuer in meeting the target offering amount. Any issuer that sold securities in reliance on Section 4(a)(6) also would be required to file annually with the Commission an annual report to update the previously provided disclosure about the issuer's contact information; directors, officers and certain beneficial owners; business and business plan; current number of employees; financial condition; ownership and capital structure; material factors that make an investment in the issuer speculative or

[1110] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various Sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[1111] 5 U.S.C. 603.

[1112] 17 CFR 230.157.

[1113] 17 CFR 240.0–10(c).

[1114] FOCUS Reports, or ''Financial and Operational Combined Uniform Single'' Reports, are monthly, quarterly, and annual reports that broker-dealers generally are required to file with the Commission and/or self-regulatory organizations pursuant to Exchange Act Rule 17a–5 (17 CFR 240.17a–5).

[1115] *See* 17 CFR 240.0–10(a).

risky; indebtedness; description of other offerings of securities; and transactions with related parties.

Intermediaries would be required to register with the Commission as either brokers or as funding portals pursuant to the proposed rules. Intermediaries also would be required to provide quarterly reports to the Commission. Funding portals would be required to make and keep certain records in accordance with the proposed rules. In addition, the proposed rules would impose specific compliance requirements on intermediaries.

In proposing this regulation, the Commission took into account that the regulation, as mandated in the JOBS Act, aimed to address difficulties encountered by issuers that are small entities. Accordingly, the Commission designed the proposed rules for intermediaries, to the extent possible, for small entities. We believe that the potential impact of the proposed regulation on larger brokers and funding portals would be less than on small brokers and small intermediaries. We believe that the reporting, recordkeeping and other compliance requirements of the proposed regulation applicable to intermediaries would impact, in particular, small entities that decide to register as funding portals. We believe that most of these requirements would be performed by internal compliance personnel of the broker or funding portal, but we estimate that at least one-third of funding portals may decide to hire outside counsel and third-party service providers to assist in meeting the compliance requirements. For example, a funding portal may decide to hire a third party to maintain records required by the proposed rules.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap or conflict with the proposed regulation or the proposed amendment to Rule 30–1 of our Rules of Organization and Program Management.

F. Significant Alternatives

Pursuant to Section 3(a) of the Regulatory Flexibility Act,[1116] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

1. Issuers

The Commission considered whether it is necessary or appropriate to establish different compliance or reporting requirements or timetables or to clarify, consolidate or simplify compliance and reporting requirements under the proposed rules for small issuers. With respect to using performance rather than design standards, the Commission used performance standards to the extent appropriate under the statute. For example, issuers have the flexibility to customize the presentation of certain disclosures in their offering statements.[1117] The Commission also considered whether there should be an exemption from coverage of the rule, or any part of the rule, for small issuers. However, because the proposed rules have been designed in the context of crowdfunding, which focuses on the needs of issuers that are small entities, the Commission believes that small issuers should be covered by the proposed rules. The Commission does not believe it would be necessary to establish different compliance requirements for small issuers. Having inconsistent requirements could undermine the objectives of the proposed rules.

2. Intermediaries

The Commission also considered whether, for small brokers or small funding portals, it is appropriate to establish different compliance, reporting or timing requirements, or whether to clarify, consolidate or simplify those requirements in our proposed rules. While the proposed rules are based in large part on existing compliance requirements applicable to registered brokers, the Commission believes that it would not be necessary to establish different requirements for small entities (whether brokers or funding portals) that engage in crowdfunding. The proposed rules have been tailored to the limited role intermediaries would play in offerings made pursuant to Section 4(a)(6) (as compared to the wide range of services that a traditional broker-dealer may provide). Therefore, we believe that the proposed rules are appropriate, and properly cover all brokers and funding portals. The Commission believes that having separate requirements for small entities (whether brokers or funding portals) could undermine the objectives of the proposed requirements, and could lead to less regulatory clarity.

G. Request for Comment

The Commission encourages written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on the number of small entities that would be affected by the proposed rules and whether the effect on small entities would be economically significant. Commenters are asked to describe the nature of any effect and to provide empirical data to support their views.

VII. Statutory Authority and Text of Proposed Regulation

We are proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, Sections 4(a)(6), 4A and 19 thereof, 15 U.S.C. 77a *et seq.,* the Exchange Act, particularly, Sections 3(b), 3(h), 10(b), 15, 17, 23(a) and 36 thereof, 15 U.S.C. 78a *et seq.,* and Public Law 112–106, § 301–305, 126 Stat. 306 (2012).

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Reporting and recordkeeping requirements.

17 CFR Part 227

Crowdfunding, Funding portals, Intermediaries, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 232 and 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

[1116] 5 U.S.C. 603(c).

[1117] *See* Section II.B.3 above.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for part 200, subpart A, continues to read, in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d-2, 78w, 78ll(d), 78mm, 80a–37, 80b–11, 7202, and 7211 et seq., unless otherwise noted.

* * * * *

■ 2. Amend § 200.30–1 by:

■ a. Redesignating paragraphs (d), (e), (f), (g), (h), (i), (j) and (k) as paragraphs (e), (f), (g), (h), (i), (j), (k) and (*l*), respectively; and

■ b. Adding new paragraph (d).

The addition reads as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and Regulation Crowdfunding thereunder (§§ 227.100 through 227.503 of this chapter), to authorize the granting of applications under § 227.503(b)(2) of this chapter upon the showing of good cause that it is not necessary under the circumstances that the exemption under Regulation Crowdfunding be denied.

* * * * *

■ 3. Part 227 is added to read as follows:

PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS

Sec.

Authority: 15 U.S.C. 77d, 77d–1, 77s, 78c, 78o, 78q, 78w, 78mm, and Pub. L. 112–106, § 301–305, 126 Stat. 306 (2012), unless otherwise noted.

Subpart A—General

§ 227.100 Crowdfunding exemption and requirements.

(a) *Exemption.* An issuer may offer and sell securities in reliance on Section 4(a)(6) of the Securities Act of 1933 (the ''Securities Act'') (15 U.S.C. 77d(a)(6)), provided that:

(1) The aggregate amount of securities sold to all investors by the issuer in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) during the 12-month period preceding the date of such offer or sale, including the securities offered in such transaction, shall not exceed $1,000,000;

(2) The aggregate amount of securities sold to any investor by any issuer in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) during the 12-month period preceding the date of such transaction, including the securities sold to such investor in such transaction, shall not exceed the greater of:

(i) $2,000 or 5 percent of annual income or net worth of the investor, whichever is greater, if both the annual income and net worth are less than $100,000; and

(ii) 10 percent of annual income or net worth of the investor, whichever is greater, not to exceed an amount sold of $100,000, if either the annual income or net worth of the investor is equal to or more than $100,000;

Instruction 1 to paragraph (a)(2). To determine the investment limit for a natural person, the person's annual income and net worth shall be calculated as those values are calculated for purposes of determining accredited investor status in accordance with 17 CFR 230.501.

Instruction 2 to paragraph (a)(2). The person's annual income and net worth may be calculated jointly with the annual income and net worth of the person's spouse.

Instruction 3 to paragraph (a)(2). An issuer offering and selling securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) may rely on the efforts an intermediary is required to undertake pursuant to § 227.303(b) to ensure that the aggregate amount of securities purchased by an investor in offerings pursuant to Section 4(a)(6) of the Securities Act will not cause the investor to exceed the limit set forth in Section 4(a)(6) of the Securities Act and § 227.100(a)(2), provided that the issuer does not know that the investor had exceeded the investor limits or would exceed the investor limits as a result of purchasing securities in the issuer's offering.

(3) The transaction is conducted through an intermediary that complies with the requirements in Section 4A(a) of the Securities Act (15 U.S.C. 77d–1(a)) and the related requirements in Regulation Crowdfunding (§§ 227.100 *et seq.*), and the transaction is conducted exclusively through the intermediary's platform; and

Instruction 1 to paragraph (a)(3). An issuer shall not conduct an offering or concurrent offerings in reliance on Section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)) using more than one intermediary.

Instruction 2 to paragraph (a)(3). An intermediary through which a crowdfunding transaction is conducted may engage in back office or other administrative functions other than on the intermediary's platform.

(4) The issuer complies with the requirements in Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) and the related requirements in this part.

(b) *Applicability.* The crowdfunding exemption shall not apply to transactions involving the offer or sale of securities by any issuer that:

(1) Is not organized under, and subject to, the laws of a State or territory of the United States or the District of Columbia;

(2) Is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78m or 78o(d));

(3) Is an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or is excluded from the definition of investment company by Section 3(b) or Section 3(c) of that Act (15 U.S.C. 80a–3(b) or 80a–3(c));

(4) Is not eligible to offer or sell securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) as a result of a disqualification as specified in § 227.503(a);

(5) Has sold securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and has not filed with the Commission and provided to investors, to the extent required, the ongoing annual reports required by this

part during the two years immediately preceding the filing of the required offering statement; or

(6) Has no specific business plan or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(c) *Issuer.* For purposes of this part, *issuer* includes all entities controlled by or under common control with the issuer. It also includes any predecessor of the issuer.

Instruction to paragraph (c). An entity is controlled by or under common control with the issuer if the issuer possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract or otherwise.

(d) *Platform.* For purposes of this part, *platform* means an Internet Web site or other similar electronic medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

Subpart B—Requirements for Issuers

§ 227.201 Disclosure requirements.

An issuer offering or selling securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with Section 4A of the Securities Act (15 U.S.C. 77d-1) and this part must file with the Commission on the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR), provide to investors and the relevant intermediary, and make available to potential investors the following information:

(a) The name, legal status (including its form of organization, jurisdiction in which it is organized and date of organization), physical address and Web site of the issuer;

(b) The names of the directors and officers (and any persons occupying a similar status or performing a similar function) of the issuer, all positions and offices with the issuer held by such persons, the period of time in which such persons served in the position or office and their business experience during the past three years, including:

(1) Each person's principal occupation and employment, including whether any officer is employed by another employer; and

(2) The name and principal business of any corporation or other organization in which such occupation and employment took place.

Instruction to paragraph (b). For purposes of this paragraph (b), the term *officer* means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization, whether incorporated or unincorporated.

(c) The name of each person, as of the most recent practicable date, who is a beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;

(d) A description of the business of the issuer and the anticipated business plan of the issuer;

(e) The current number of employees of the issuer;

(f) A discussion of the material factors that make an investment in the issuer speculative or risky;

(g) The target offering amount and the deadline to reach the target offering amount, including a statement that if the sum of the investment commitments does not equal or exceed the target offering amount at the offering deadline, no securities will be sold in the offering, investment commitments will be cancelled and committed funds will be returned;

(h) Whether the issuer will accept investments in excess of the target offering amount and, if so, the maximum amount that the issuer will accept and whether oversubscriptions will be allocated on a pro-rata, first come-first served, or other basis;

(i) A description of the purpose and intended use of the offering proceeds;

Instruction to paragraph (i). An issuer must identify any intended use of proceeds and provide a reasonably detailed description of such intended use, such that investors are provided with an adequate amount of information to understand how the offering proceeds will be used. If an issuer has identified a range of possible uses, the issuer should identify and describe each probable use and the factors impacting the selection of each particular use. If the issuer will accept proceeds in excess of the target offering amount, the issuer must describe the stated purpose and intended use of the excess proceeds with similar specificity.

(j) A description of the process to complete the transaction or cancel an investment commitment, including a statement that:

(1) Investors may cancel an investment commitment until 48 hours prior to the deadline identified in the issuer's offering materials;

(2) The intermediary will notify investors when the target offering amount has been met;

(3) If an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early if it provides notice about the new offering deadline at least five business days prior to such new offering deadline (absent a material change that would require an extension of the offering and reconfirmation of the investment commitment); and

(4) If an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering and the investor will receive securities in exchange for his or her investment;

(k) A statement that if an investor does not reconfirm his or her investment commitment after a material change is made to the offering, the investor's investment commitment will be cancelled and the committed funds will be returned;

(l) The price to the public of the securities or the method for determining the price, provided that, prior to any sale of securities, each investor shall be provided in writing the final price and all required disclosures;

(m) A description of the ownership and capital structure of the issuer, including:

(1) The terms of the securities being offered and each other class of security of the issuer, including the number of securities being offered and/or outstanding, whether or not such securities have voting rights, any limitations on such voting rights, how the terms of the securities being offered may be modified and a summary of the differences between such securities and each other class of security of the issuer, and how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;

(2) A description of how the exercise of the rights held by the principal shareholders of the issuer could affect the purchasers of the securities being offered;

(3) The name and ownership level of each person, as of the most recent practicable date, who is the beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;

(4) How the securities being offered are being valued, and examples of methods for how such securities may be valued by the issuer in the future,

including during subsequent corporate actions;

(5) The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions including additional issuances of securities, issuer repurchases of securities, a sale of the issuer or of assets of the issuer or transactions with related parties; and

(6) A description of the restrictions on transfer of the securities, as set forth in § 227.501;

(n) The name, Commission file number and Central Registration Depository (CRD) number (as applicable) of the intermediary through which the offering is being conducted;

(o) The amount of compensation paid to the intermediary for conducting the offering, including the amount of referral and any other fees associated with the offering;

(p) A description of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date and any other material terms;

(q) A description of exempt offerings conducted within the past three years;

Instruction to paragraph (q). In providing a description of any prior exempt offerings, disclose:

(1) The date of the offering;

(2) The offering exemption relied upon;

(3) The type of securities offered; and

(4) The amount of securities sold and the use of proceeds.

(r) A description of any transaction since the beginning of the issuer's last full fiscal year, or any currently proposed transaction, to which the issuer or any entities controlled by or under common control with the issuer was or is to be a party and the amount involved exceeds five percent of the aggregate amount of capital raised by the issuer in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) during the preceding 12-month period, inclusive of the amount the issuer seeks to raise in the current offering under Section 4(a)(6) of the Securities Act, in which any of the following persons had or is to have a direct or indirect material interest:

(1) Any director or officer of the issuer;

(2) Any person who is, as of the most recent practicable date, the beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power;

(3) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

(4) Any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the person, and any persons (other than a tenant or employee) sharing the household of the person;

Instruction to paragraph (r). For each transaction identified, disclose the name of the specified person and state his or her relationship to the issuer, the nature of his or her interest in the transaction and, where practicable, the approximate amount of the interest of such specified person. The amount of such interest shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

(s) A description of the financial condition of the issuer;

Instruction to paragraph (s). In providing a description of the issuer's financial condition, provide a discussion, to the extent material, of the issuer's historical results of operations, liquidity and capital resources. For issuers with no prior operating history, the description should include a discussion of financial milestones and operational, liquidity and other challenges. For issuers with an operating history, the discussion should address whether historical earnings and cash flows are representative of what investors should expect in the future. Issuers should take into account the proceeds of the offering and any other known or pending sources of capital. Issuers should also discuss how the proceeds from the offering will impact the issuer's liquidity and the necessity of receiving these funds and any other additional funds to the viability of the business. In addition, issuers should describe the other available sources of capital to the business, such as lines of credit or required contributions by shareholders.

(t) For offerings that, together with all other offerings of the issuer under Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) within the preceding 12-month period, have, in the aggregate, target offering amounts of:

(1) $100,000 or less, the income tax returns filed by the issuer for the most recently completed year (if any) and financial statements of the issuer, which shall be certified by the principal executive officer of the issuer to be true and complete in all material respects;

(2) More than $100,000, but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using the Statements on Standards for Accounting and Review Services issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants; and

(3) More than $500,000, financial statements audited by a public accountant who is independent of the issuer, using auditing standards issued by either the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board;

Instruction 1 to paragraph (t). To determine the financial statements that would be required under paragraph (t), an issuer would aggregate amounts offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) within the preceding 12-month period and the offering amount in the offering for which disclosure is being provided. If the issuer will accept proceeds in excess of the target offering amount, the issuer must include in the calculation to determine the financial statements that would be required under paragraph (t) the maximum offering amount that the issuer will accept.

Instruction 2 to paragraph (t). The financial statements required by paragraphs (t)(1), (t)(2) and (t)(3) of this section would include a balance sheet, income statement, statement of cash flows and statement of changes in owners' equity and notes to the financial statements prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP). The required financial statements must cover the shorter of the two most recently completed fiscal years or the period since inception.

Instruction 3 to paragraph (t). An issuer shall redact personally identifiable information from any tax returns required to be provided under paragraph (t)(1) of this section. Issuers offering securities in a transaction in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) before filing a tax return with the U.S. Internal Revenue Service for the most recently completed fiscal year may use the tax return filed with the U.S. Internal Revenue Service for the prior year (if any), provided that the issuer uses the tax return for the most recent fiscal year when it is filed, if filed during the offering period.

Instruction 4 to paragraph (t). With respect to the financial statements required by paragraph (t)(1) of this section, an issuer's principal executive officer must provide the following certification in the Form C—Offering Statement (§ 239.900 of this chapter):

I, [identify the certifying individual], certify that the financial statements of [identify the issuer] included in this Form are true and complete in all material respects. [Signature and title].

Instruction 5 to paragraph (t). A copy of the public accountant's review report must accompany the financial statements required by paragraph (t)(2) of this section.

Instruction 6 to paragraph (t). A copy of the audit report must accompany financial statements required by paragraph (t)(3) of this section. An issuer will be in compliance with the requirement to provide audited financial statements if the issuer received an unqualified or a qualified opinion, but it will not be in compliance with the requirement if it received an adverse opinion or a disclaimer of opinion.

Instruction 7 to paragraph (t). To qualify as an independent public accountant for purposes of paragraphs (t)(2) and (t)(3) of this section, the accountant must satisfy the independence requirements in Rule 2–01 of Regulation S–X (17 CFR 210.2–01).

Instruction 8 to paragraph (t). An issuer may conduct an offering in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) using financial statements for the fiscal year prior to the issuer's most recently completed fiscal year, provided that the issuer was not otherwise already required to update the financial statements pursuant to § 227.202 and updated financial statements are not otherwise available. If more than 120 days have passed since the end of the issuer's most recently completed fiscal year, the issuer must use financial statements for its most recently completed fiscal year.

Instruction 9 to paragraph (t). An issuer must include a discussion of any material changes in the financial condition of the issuer during any time period subsequent to the period for which financial statements are provided, including changes in reported revenue or net income.

Instruction 10 to paragraph (t). An issuer may voluntarily provide financial statements that meet the requirements for a higher aggregate target offering amount, even if the aggregate amounts sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) within the preceding 12-month period do not require it.

(u) Any matters that would have triggered disqualification under § 227.503(a) had they occurred on or after [effective date of final rule]. The failure to furnish such disclosure timely shall not prevent an issuer from continuing to rely on the exemption provided by Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) if the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known of the existence of the undisclosed matter or matters; and

Instruction to paragraph (u). An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(v) Updates regarding the progress of the issuer in meeting the target offering amount, to be provided in accordance with § 227.203.

§ 227.202 Ongoing reporting requirements.

(a) An issuer that has offered and sold securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with Section 4A of the Securities Act (15 U.S.C. 77d–1) and this part must file with the Commission on EDGAR and post on the issuer's Web site an annual report of its results of operations as described in § 227.201(s) and financial statements of the issuer for the highest aggregate target offering amount previously provided under § 227.201(t). The report also must include the disclosure required by paragraphs (a), (b), (c), (d), (e), (f), (m), (p), (q), and (r) of § 227.201. The report must be filed in accordance with the requirements of § 227.203 and Form C (§ 239.900 of this chapter) and no later than 120 days after the end of the fiscal year covered by the report.

(b) An issuer must continue to comply with the ongoing reporting requirements until:

(1) The issuer becomes a reporting company required to file reports under Section 13(a) or Section 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d));

(2) The issuer or another party repurchases all of the securities issued in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), including any payment in full of debt securities or any complete redemption of redeemable securities; or

(3) The issuer liquidates or dissolves its business in accordance with state law.

§ 227.203 Filing requirements and form.

(a) *Form C—Offering Statement and Amendments* (§ 239.900 of this chapter).

(1) *Offering Statement.* An issuer offering or selling securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with Section 4A of the Securities Act (15 U.S.C. 77d–1) and this part must file with the Commission on EDGAR, provide to investors and the relevant intermediary, and make available to potential investors a Form C: Offering Statement (Form C) (§ 239.900 of this chapter) prior to the commencement of the offering of securities. The Form C must include the information required by § 227.201 of Regulation Crowdfunding.

Instruction to paragraph (a)(1). An issuer shall input the following information in the XML-based portion of Form C (§ 239.900 of this chapter): name, legal status and contact information of the issuer; name, Commission file number and CRD number (as applicable) of the intermediary through which the offering will be conducted; amount of compensation paid to the intermediary, including the amount of referral and other fees associated with the offering; type of security offered; number of securities offered; offering price; target offering amount and maximum offering amount (if different from the target offering amount); whether oversubscriptions will be accepted and, if so, how they will be allocated; deadline to reach the target offering amount; current number of employees; and selected financial data for the prior two fiscal years (including total assets, cash and cash equivalents, accounts receivable, short-term debt, long-term debt, revenues/sales, cost of goods sold, taxes paid and net income).

(2) *Amendments to Offering Statement.* An issuer must file with the Commission on EDGAR, provide to investors and the relevant intermediary, and make available to potential investors an amendment to the offering statement filed on Form C (§ 239.900 of this chapter) to disclose any material changes, additions or updates to information that it provides to investors through the intermediary's platform, only if the offering has not yet been completed or terminated. The amendment must be filed on Form C: Amendment (Form C–A) (§ 239.900 of this chapter), and if the amendment reflects material changes, additions or updates, the issuer shall check the box indicating that investors must reconfirm an investment commitment within five business days or the investor's commitment will be considered withdrawn.

Instruction to paragraph (a)(2). An issuer may file an amendment on Form

C–A (§ 239.900 of this chapter) to reflect changes, additions or updates that it considers not material, and in such circumstance, an issuer should not check the box indicating that investors must reconfirm the investment commitment within five business days.

(3) *Progress Updates.* An issuer must file with the Commission on EDGAR, provide to investors and the relevant intermediary, and make available to potential investors a Form C: Progress Update (Form C–U) (§ 239.900 of this chapter) to disclose its progress in meeting the target offering amount no later than five business days after the issuer reaches one-half and 100 percent of the target offering amount. If the issuer will accept proceeds in excess of the target offering amount, the issuer must file with the Commission on EDGAR, provide to investors and the relevant intermediary, and make available to potential investors, no later than five business days after the offering deadline, a final Form C–U to disclose the total amount of securities sold in the offering.

Instruction 1 to paragraph (a)(3). An issuer shall input the progress update in the XML-based portion of Form C–U (§ 239.900 of this chapter).

Instruction 2 to paragraph (a)(3). If multiple Forms C–U (§ 239.900 of this chapter) are triggered within the same five business day period, the issuer may consolidate such progress updates into one Form C–U, so long as the Form C–U discloses the most recent threshold that was met and the Form C–U is filed with the Commission on EDGAR, provided to investors and the relevant intermediary, and made available to potential investors by the day on which the first progress update is due.

Instruction 1 to paragraph (a). An issuer would satisfy the requirement to provide to the relevant intermediary the information required by § 227.203(a) if the issuer provides to the relevant intermediary a copy of the disclosures filed with the Commission on EDGAR.

Instruction 2 to paragraph (a). An issuer would satisfy the requirement to provide to investors and to make available to potential investors the information required by § 227.203(a) if the issuer refers investors to the information on the intermediary's platform by means of a posting on the issuer's Web site or by email.

(b) *Form C: Annual Report* (§ 239.900 of this chapter). (1) An issuer that sold securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with Section 4A of the Securities Act (15 U.S.C. 77d–1) and this part must file an annual report on Form C: Annual Report (Form C–AR) (§ 239.900 of this chapter) with the Commission no later than 120 days after the end of the fiscal year covered by the report. The annual report shall include the information required by § 227.202(a).

Instruction to paragraph (b)(1). An issuer shall input the following information in the XML-based portion of Form C–AR (§ 239.900 of this chapter): Name, legal status and contact information of the issuer; current number of employees; and selected financial data for the prior two fiscal years (including total assets, cash and cash equivalents, accounts receivable, short-term debt, long-term debt, revenues/sales, cost of goods sold, taxes paid and net income).

(2) An issuer eligible to terminate its obligation to file annual reports with the Commission pursuant to § 227.202(b) must file, within five business days from the date on which the issuer becomes eligible to terminate is reporting obligation, Form C: Termination of Reporting (Form C–TR) (§ 239.900 of this chapter) with the Commission to advise investors that the issuer will cease reporting pursuant to this part.

§ 227.204 Advertising.

(a) An issuer may not advertise directly or indirectly the terms of an offering made in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), except for notices that direct investors to the intermediary's platform.

(b) A notice regarding the terms of an issuer's offering in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) that directs investors to the intermediary's platform may include no more than the following:

(1) A statement that the issuer is conducting an offering pursuant to Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), the name of the intermediary through which the offering is being conducted and a link directing the potential investor to the intermediary's platform;

(2) The terms of the offering; and

(3) Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number and Web site of the issuer, the email address of a representative of the issuer and a brief description of the business of the issuer.

(c) Notwithstanding the prohibition on advertising the terms of the offering, an issuer may communicate with investors and potential investors about the terms of the offering through communication channels provided by the intermediary on the intermediary's platform, provided that an issuer identifies itself as the issuer in all communications.

Instruction to § 227.204. For purposes of this section, *terms of the offering* means the amount of securities offered, the nature of the securities, the price of the securities and the closing date of the offering period.

§ 227.205 Promoter compensation.

(a) An issuer shall be permitted to compensate or commit to compensate, directly or indirectly, any person to promote its offerings in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) through communication channels provided by an intermediary on the intermediary's platform, but only if the issuer takes reasonable steps to ensure that such person clearly discloses the receipt, past or prospective, of such compensation with any such communication. A founder or an employee of the issuer that engages in promotional activities on behalf of the issuer through the communication channels provided by the intermediary must disclose, with each posting, that he or she is engaging in those activities on behalf of the issuer.

(b) Other than as set forth in paragraph (a) of this section, an issuer shall not compensate or commit to compensate, directly or indirectly, any person to promote its offerings in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), unless such promotion is limited to notices permitted by, and in compliance with, § 227.204.

Subpart C—Requirements for Intermediaries

§ 227.300 Intermediaries.

(a) *Requirements.* A person acting as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) must:

(1) Be registered with the Commission as a broker under Section 15(b) of the Exchange Act (15 U.S.C. 78*o*(b)) or as a funding portal in accordance with the requirements of § 227.400; and

(2) Be a member of the Financial Industry Regulatory Authority or any other applicable national securities association registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*-3).

(b) *Prohibitions.* An intermediary and any director, officer or partner, or any person occupying a similar status or performing a similar function may not have a financial interest in an issuer that

is offering or selling securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) through the intermediary's platform, or receive a financial interest in an issuer as compensation for the services provided to or for the benefit of the issuer in connection with the offer or sale of such securities. For purposes of this paragraph, a *financial interest in an issuer* means a direct or indirect ownership of, or economic interest in, any class of the issuer's securities.

(c) *Definitions.* For purposes of this part:

(1) *Associated person of a funding portal* or *person associated with a funding portal* means any partner, officer, director or manager of a funding portal (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling or controlled by such funding portal, or any employee of a funding portal, except that any person associated with a funding portal whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of Section 15(b) of the Exchange Act (15 U.S.C. 78*o*(b)) (other than paragraphs (4) and (6) thereof).

(2) *Funding portal* means a broker acting as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), that does not:

(i) Offer investment advice or recommendations;

(ii) Solicit purchases, sales or offers to buy the securities displayed on its platform;

(iii) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform; or

(iv) Hold, manage, possess, or otherwise handle investor funds or securities.

(3) *Intermediary* means a broker registered under Section 15(b) of the Exchange Act (15 U.S.C. 78*o*(b)) or a funding portal registered under § 227.400 and includes, where relevant, an associated person of the registered broker or registered funding portal.

(4) *Investor* refers to any investor or any potential investor, as the context requires.

(5) *Self-regulatory organization* or *SRO* has the meaning as defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26)), and includes the Financial Industry Regulatory Authority (FINRA) and any other national securities association registered with the Commission.

§ 227.301 Measures to reduce risk of fraud.

An intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) must:

(a) Have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) through the intermediary's platform complies with the requirements in Section 4A(b) of the Act (15 U.S.C. 77d-1(b)) and the related requirements in this part. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning compliance with these requirements unless the intermediary has reason to question the reliability of those representations;

(b) Have a reasonable basis for believing that the issuer has established means to keep accurate records of the holders of the securities it would offer and sell through the intermediary's platform. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning compliance with this requirement unless the intermediary has reason to question the reliability of those representations.

(c) Deny access to its platform to an issuer if the intermediary:

(1) Has a reasonable basis for believing that the issuer or any of its officers, directors (or any person occupying a similar status or performing a similar function) or beneficial owners of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, is subject to a disqualification under § 227.503. In satisfying this requirement, an intermediary must, at a minimum, conduct a background and securities enforcement regulatory history check on each issuer whose securities are to be offered by the intermediary and on each officer, director or beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power.

(2) Believes that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection. In satisfying this requirement, an intermediary must deny access if it believes that it is unable to adequately or effectively assess the risk of fraud of the issuer or its potential offering. In addition, if an intermediary becomes aware of information after it has granted access that causes it to believe that the issuer or the offering presents the potential for fraud or otherwise raises concerns regarding investor protection, the intermediary must promptly remove the offering from its platform, cancel the offering, and return (or, for funding portals, direct the return of) any funds that have been committed by investors in the offering.

§ 227.302 Account opening.

(a) *Accounts and Electronic Delivery.* (1) No intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) until the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials.

(2) An intermediary must provide all information that is required to be provided by the intermediary under Subpart C (§§ 227.300–305), including, but not limited to, educational materials, notices and confirmations, through electronic means. Unless otherwise indicated in the relevant rule of Subpart C, in satisfying this requirement, an intermediary must provide the information through an electronic message that contains the information, through an electronic message that includes a specific link to the information as posted on intermediary's platform, or through an electronic message that provides notice of what the information is and that it is located on the intermediary's platform or on the issuer's Web site. Electronic messages include, but are not limited to, email messages.

(b) *Educational Materials.* (1) In connection with establishing an account for an investor, an intermediary must deliver educational materials to such investor that explain in plain language and are otherwise designed to communicate effectively and accurately:

(i) The process for the offer, purchase and issuance of securities through the intermediary and the risks associated with purchasing securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6));

(ii) The types of securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) available for purchase on the intermediary's platform and the risks associated with each type of security, including the risk of having limited voting power as a result of dilution;

(iii) The restrictions on the resale of a security offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6));

(iv) The types of information that an issuer is required to provide under § 227.202, the frequency of the delivery

of that information and the possibility that those obligations may terminate in the future;

(v) The limitations on the amounts an investor may invest pursuant to § 227.100(a)(2);

(vi) The limitations on an investor's right to cancel an investment commitment and the circumstances in which an investment commitment may be cancelled by the issuer;

(vii) The need for the investor to consider whether investing in a security offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) is appropriate for that investor; and

(viii) That following completion of an offering conducted through the intermediary, there may or may not be any ongoing relationship between the issuer and intermediary.

(2) An intermediary must make the most current version of its educational material available on its platform at all times and, if at any time, the intermediary makes a material revision to its educational materials, it must make the revised educational materials available to all investors before accepting any additional investment commitments or effecting any further transactions in securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

(c) *Promoters.* In connection with establishing an account for an investor, an intermediary must inform the investor that any person who promotes an issuer's offering for compensation, whether past or prospective, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the issuer on the intermediary's platform, must clearly disclose in all communications on the intermediary's platform, respectively, the receipt of the compensation and that he or she is engaging in promotional activities on behalf of the issuer.

(d) *Compensation Disclosure.* When establishing an account for an investor, an intermediary must clearly disclose the manner in which the intermediary is compensated in connection with offerings and sales of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

§ 227.303 Requirements with respect to transactions.

(a) *Issuer Information.* An intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) must make available to the Commission and to investors any information required to be provided by the issuer of the securities under §§ 227.201 and 203(a).

(1) This information must be made publicly available on the intermediary's platform, in a manner that reasonably permits a person accessing the platform to save, download, or otherwise store the information;

(2) This information must be made publicly available on the intermediary's platform for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments;

(3) This information, including any additional information provided by the issuer, must remain publicly available on the intermediary's platform until the offer and sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) is completed or cancelled; and

(4) An intermediary may not require any person to establish an account with the intermediary to access this information.

(b) *Investor Qualification.* Each time before accepting any investment commitment (including any additional investment commitment from the same person), an intermediary must:

(1) Have a reasonable basis for believing that the investor satisfies the investment limitations established by Section 4(a)(6)(B) of the Act (15 U.S.C. 77d(a)(6)(B)) and Regulation Crowdfunding (§§ 227.100 *et seq.*). An intermediary may rely on an investor's representations concerning compliance with the investment limitation requirements concerning the investor's annual income, net worth, and the amount of the investor's other investments made pursuant to Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) unless the intermediary has reason to question the reliability of the representation.

(2) Obtain from the investor:

(i) A representation that the investor has reviewed the intermediary's educational materials delivered pursuant to § 227.302(b), understands that the entire amount of his or her investment may be lost, and is in a financial condition to bear the loss of the investment; and

(ii) A questionnaire completed by the investor demonstrating the investor's understanding that:

(A) There are restrictions on the investor's ability to cancel an investment commitment and obtain a return of his or her investment;

(B) It may be difficult for the investor to resell securities acquired in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)); and

(C) Investing in securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) involves risk, and the investor should not invest any funds in an offering made in reliance on Section 4(a)(6) of the Securities Act unless he or she can afford to lose the entire amount of his or her investment.

(c) *Communication Channels.* An intermediary must provide on its platform communication channels by which persons can communicate with one another and with representatives of the issuer about offerings made available on the intermediary's platform, provided:

(1) If the intermediary is a funding portal, it does not participate in these communications other than to establish guidelines for communication and remove abusive or potentially fraudulent communications;

(2) The intermediary permits public access to view the discussions made in the communication channels;

(3) The intermediary restricts posting of comments in the communication channels to those persons who have opened an account with the intermediary on its platform; and

(4) The intermediary requires that any person posting a comment in the communication channels clearly and prominently disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote the issuer's offering.

(d) *Notice of Investment Commitment.* An intermediary must promptly, upon receipt of an investment commitment from an investor, give or send to the investor a notification disclosing:

(1) The dollar amount of the investment commitment;

(2) The price of the securities, if known;

(3) The name of the issuer; and

(4) The date and time by which the investor may cancel the investment commitment.

(e) *Maintenance and Transmission of Funds.* (1) An intermediary that is a registered broker must comply with the requirements of 17 CFR 240.15c2–4.

(2) An intermediary that is a funding portal must direct investors to transmit the money or other consideration directly to a qualified third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled thereto in accordance with paragraph (e)(3)of this section. For purposes of this Subpart C (§§ 227.300–305), a qualified third party means a

bank that has agreed in writing either to hold the funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when so directed by the funding portal as described in paragraph (e)(3)of this section, or to maintain a bank account (or accounts) for the exclusive benefit of investors and the issuer.

(3) A funding portal that is an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) shall promptly direct the qualified third party to:

(i) Transmit funds from the qualified third party to the issuer when the aggregate amount of investment commitments from all investors is equal to or greater than the target amount of the offering and the cancellation period as set forth in § 227.304 has elapsed, *provided that* in no event may the funding portal direct this transmission of funds earlier than 21 days after the date on which the intermediary makes publicly available on its platform the information required to be provided by the issuer under §§ 227.201 and 203(a);

(ii) Return funds to an investor when an investment commitment has been cancelled in accordance with § 227.304 (including for failure to obtain effective reconfirmation as required under § 227.304(c)); and

(iii) Return funds to investors when an issuer does not complete the offering.

(f) *Confirmation of Transaction.* (1) An intermediary must, at or before the completion of a transaction in a security in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), give or send to each investor a notification disclosing:

(i) The date of the transaction;

(ii) The type of security that the investor is purchasing;

(iii) The identity, price, and number of securities purchased by the investor, as well as the number of securities sold by the issuer in the transaction and the price(s) at which the securities were sold;

(iv) If a debt security, the interest rate and the yield to maturity calculated from the price paid and the maturity date;

(v) If a callable security, the first date that the security can be called by the issuer; and

(vi) The source and amount of any remuneration received or to be received by the intermediary in connection with the transaction, including the amount and form of any remuneration that is received, or will be received, by the intermediary from persons other than the issuer.

(2) An intermediary satisfying the requirements of paragraph (1) of this section is exempt from the requirements of 17 CFR 240.10b–10 with respect to a transaction in a security offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

§ 227.304 Completion of offerings, cancellations and reconfirmations.

(a) *Generally.* An investor may cancel an investment commitment for any reason until 48 hours prior to the deadline identified in the issuer's offering materials. During the 48 hours prior to such deadline, an investment commitment may not be cancelled except as provided in paragraph (c) below.

(b) *Early Completion of Offering.* If an issuer reaches the target offering amount prior to the deadline identified in its offering materials pursuant to § 227.201(g), the issuer may close the offering on a date earlier than the deadline identified in its offering materials pursuant to § 227.201(g), *provided that:*

(1) The offering remains open for a minimum of 21 days pursuant to § 227.303(a);

(2) The intermediary provides notice to any potential investors, and gives or sends notice to investors that have made investment commitments in the offering, of:

(i) The new, anticipated deadline of the offering;

(ii) The right of investors to cancel investment commitments for any reason until 48 hours prior to the new offering deadline; and

(iii) Whether the issuer will continue to accept investment commitments during the 48-hour period prior to the new offering deadline.

(3) The new offering deadline is scheduled for and occurs at least five business days after the notice required in paragraph b(2) of this section is provided; and

(4) At the time of the new offering deadline, the issuer continues to meet or exceed the target offering amount.

(c) *Cancellations and Reconfirmations Based on Material Changes.* (1) If there is a material change to the terms of an offering or to the information provided by the issuer, the intermediary must give or send to any investor who has made an investment commitment notice of the material change and that the investor's investment commitment will be cancelled unless the investor reconfirms his or her investment commitment within five business days of receipt of the notice. If the investor fails to reconfirm his or her investment within those five business days, the intermediary within five business days thereafter must:

(i) Give or send the investor a notification disclosing that the commitment was cancelled, the reason for the cancellation and the refund amount that the investor is expected to receive; and

(ii) Direct the refund of investor funds.

(2) If material changes to the offering or to the information provided by the issuer regarding the offering occur within five business days of the maximum number of days that an offering is to remain open, the offering must be extended to allow for a period of five business days for the investor to reconfirm his or her investment.

(d) *Return of Funds If Offering Is Not Completed.* If an issuer does not complete an offering, an intermediary must within five business days:

(1) Give or send each investor a notification of the cancellation, disclosing the reason for the cancellation, and the refund amount that the investor is expected to receive;

(2) Direct the refund of investor funds; and

(3) Prevent investors from making investment commitments with respect to that offering on its platform.

§ 227.305 Payments to third parties.

(a) *Prohibition on Payments for Personally Identifiable Information.* An intermediary may not compensate any person for providing the intermediary with the personally identifiable information of any investor or potential investor in securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

(b) *Certain permitted payments.* Subject to paragraph (a) of this section, an intermediary may compensate a person for directing issuers or potential investors to the intermediary's platform, *provided that* unless the compensation is made to a registered broker or dealer, the compensation is not based, directly or indirectly, on the purchase or sale of a security offered in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) on or through the intermediary's platform.

(c) For purposes of this rule, personally identifiable information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

Subpart D—Funding Portal Regulation

§ 227.400 Registration of funding portals.

(a) *Registration.* A funding portal must register with the Commission, by filing a complete Form Funding Portal (§ 249.1500 of this chapter) in accordance with the instructions on the form, and become a member of the Financial Industry Regulatory Authority or any other applicable national securities association registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*−3). The registration will be effective the later of:

(1) 30 calendar days after the date that the registration is received by the Commission; or

(2) The date the funding portal is approved for membership by the Financial Industry Regulatory Authority or any other applicable national securities association registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*−3).

(b) *Amendments to Registration.* A funding portal must file an amendment to Form Funding Portal (§ 249.1500 of this chapter) within 30 days of any of the information previously submitted on Form Funding Portal becoming inaccurate for any reason.

(c) *Successor Registration.* (1) If a funding portal succeeds to and continues the business of a registered funding portal, the registration of the predecessor will remain effective as the registration of the successor if the successor, within 30 days after such succession, files a registration on Form Funding Portal (§ 249.1500 of this chapter) and the predecessor files a withdrawal on Form Funding Portal; *provided, however,* that the registration of the predecessor funding portal will be deemed withdrawn 45 days after registration on Form Funding Portal is filed by the successor.

(2) Notwithstanding paragraph (c)(1) of this section, if a funding portal succeeds to and continues the business of a registered funding portal and the succession is based solely on a change of the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor on Form Funding Portal (§ 249.1500 of this chapter) to reflect these changes.

(d) *Withdrawal.* A funding portal must promptly file a withdrawal of registration on Form Funding Portal (§ 249.1500 of this chapter) in accordance with the instructions on the form upon ceasing to operate as a funding portal. Withdrawal will be effective on the later of 30 days after receipt by the Commission, after the funding portal is no longer operational, or within such longer period of time as to which the funding portal consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors.

(e) *Applications and Reports.* The applications and reports provided for in this section shall be considered filed when a complete Form Funding Portal (§ 249.1500 of this chapter) is submitted with the Commission or its designee. Duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member.

(f) *Fidelity Bond.* As a condition to becoming registered as a funding portal, the funding portal must have in place and thereafter maintain, for the duration of the period when it maintains such registration, fidelity bond coverage that:

(1) Has a minimum coverage of $100,000;

(2) Covers any associated person of the funding portal unless otherwise excepted in the rules set forth by the Financial Industry Regulatory Authority or any applicable national securities association that is registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*–3) of which it is a member; and

(3) Meets any other applicable requirements as set forth by the Financial Industry Regulatory Authority or any applicable national securities association that is registered under Section 15A of the Exchange Act (15 U.S.C. 78*o*–3) of which it is a member.

(g) *Nonresident Funding Portals.* Registration pursuant to this section by a nonresident funding portal shall be conditioned upon there being an information sharing arrangement in place between the Commission and the competent regulator in the jurisdiction under the laws of which the nonresident funding portal is organized or where it has its principal place of business, that is applicable to the nonresident funding portal.

(1) *Definition.* For purposes of this section, the term *nonresident funding portal* shall mean a funding portal incorporated in or organized under the laws of a jurisdiction outside of the United States or its territories, or having its principal place of business in any place not in the United States or its territories.

(2) *Power of Attorney.* (i) Each nonresident funding portal registered or applying for registration pursuant to this section shall obtain a written consent and power of attorney appointing an agent in the United States, other than the Commission or a Commission member, official or employee, upon whom may be served any process, pleadings or other papers in any action. This consent and power of attorney must be signed by the nonresident funding portal and the named agent(s) for service of process.

(ii) Each nonresident funding portal registered or applying for registration pursuant to this section shall, at the time of filing its application on Form Funding Portal (§ 249.1500 of this chapter), furnish to the Commission the name and address of its United States agent for service of process on Schedule C to the Form.

(iii) Any change of a nonresident funding portal's agent for service of process and any change of name or address of a nonresident funding portal's existing agent for service of process shall be communicated promptly to the Commission through amendment of the Schedule C to Form Funding Portal (§ 249.1500 of this chapter).

(iv) Each nonresident funding portal must promptly appoint a successor agent for service of process if the nonresident funding portal discharges its identified agent for service of process or if its agent for service of process is unwilling or unable to accept service on behalf of the nonresident funding portal.

(v) Each nonresident funding portal must maintain, as part of its books and records, the written consent and power of attorney identified in paragraph (g)(2)(i) of this section for at least three years after the agreement is terminated.

(3) *Access to Books and Records.*

(i) *Certification and Opinion of Counsel.* Any nonresident funding portal applying for registration pursuant to this section shall certify on Schedule C to Form Funding Portal (§ 249.1500 of this chapter) and provide an opinion of counsel that the nonresident funding portal can, as a matter of law, provide the Commission and any national securities association of which it is a member with prompt access to the books and records of such nonresident funding portal and can, as a matter of law, submit to onsite inspection and examination by the Commission and any national securities association of which it is a member.

(ii) *Amendments.* The nonresident funding portal shall re-certify, on Schedule C to Form Funding Portal (§ 249.1500 of this chapter), within 90 days after any changes in the legal or regulatory framework that would impact the nonresident funding portal's ability to provide, or the manner in which it

provides, the Commission, or any national securities association of which it is a member, with prompt access to its books and records or that would impact the Commission's or such national securities association's ability to inspect and examine the nonresident funding portal. The re-certification shall be accompanied by a revised opinion of counsel describing how, as a matter of law, the nonresident funding portal can continue to meet its obligations to provide the Commission and such national securities association with prompt access to its books and records and to be subject to Commission and national securities association inspection and examination under the new regulatory regime.

§ 227.401 Exemption.

(a) A funding portal that is registered with the Commission pursuant to § 227.400 is exempt from the broker registration requirements of Section 15(a)(1) of the Exchange Act (15 U.S.C. 78*o*(a)(1)) in connection with its activities as a funding portal.

(b) Notwithstanding paragraph (a) of this section, for purposes of 31 CFR chapter X, a funding portal is ''required to be registered'' as a broker or dealer with the Commission under the Exchange Act.

§ 227.402 Conditional safe harbor.

(a) *General.* Under Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)), a funding portal acting as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) may not: Offer investment advice or recommendations; solicit purchases, sales, or offers to buy the securities offered or displayed on its platform or portal; compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform or portal; hold, manage, possess, or otherwise handle investor funds or securities; or engage in such other activities as the Commission, by rule, determines appropriate. This section is intended to provide clarity with respect to the ability of a funding portal to engage in certain activities, consistent with the prohibitions under Section 3(a)(80) of the Exchange Act. No presumption shall arise that a funding portal has violated the prohibitions under Section 3(a)(80) of the Exchange Act or this part by reason of the funding portal or its associated persons engaging in activities in connection with the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act that do not meet the conditions specified in paragraph (b) of this section. The antifraud provisions and all other applicable provisions of the federal securities laws continue to apply to the activities described in paragraph (b) of this section.

(b) *Permitted Activities.* A funding portal may, consistent with the prohibitions under Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)) and this part:

(1) Apply objective criteria to limit the securities offered in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) through the funding portal's platform where:

(i) The criteria are reasonably designed to result in a broad selection of issuers offering securities through the funding portal's platform, are applied consistently to all potential issuers and offerings and are clearly displayed on the funding portal's platform; and

(ii) The criteria may include, among other things, the type of securities being offered (for example, common stock, preferred stock or debt securities), the geographic location of the issuer and the industry or business segment of the issuer, *provided* that a funding portal may not deny access to an issuer based on the advisability of investing in the issuer or its offering, except to the extent described in paragraph (b)(10) of this section;

(2) Apply objective criteria to highlight offerings on the funding portal's platform where:

(i) The criteria are reasonably designed to highlight a broad selection of issuers offering securities through the funding portal's platform, are applied consistently to all issuers and offerings and are clearly displayed on the funding portal's platform;

(ii) The criteria may include, among other things, the type of securities being offered (for example, common stock, preferred stock or debt securities); the geographic location of the issuer; the industry or business segment of the issuer; the number or amount of investment commitments made, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount; and the minimum or maximum investment amount; *provided* that a funding portal may not highlight an issuer or offering based on the advisability of investing in the issuer or its offering; and

(iii) The funding portal does not receive special or additional compensations for highlighting one or more issuers or offerings on its platform;

(3) Provide search functions or other tools that investors can use to search, sort, or categorize the offerings available through the funding portal's platform according to objective criteria where;

(i) The objective criteria may include, among other things, the type of securities being offered (for example, common stock, preferred stock or debt securities); the geographic location of the issuer; the industry or business segment of the issuer; the number or amount of investment commitments made, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount; and the minimum or maximum investment amount; and

(ii) The objective criteria may not include, among other things, the advisability of investing in the issuer or its offering, or an assessment of any characteristic of the issuer, its business plan, its key management or risks associated with an investment.

(4) Provide communication channels by which investors can communicate with one another and with representatives of the issuer through the funding portal's platform about offerings through the platform, so long as the funding portal (and its associated persons):

(i) Does not participate in these communications, other than to establish guidelines for communication and remove abusive or potentially fraudulent communications;

(ii) Permits public access to view the discussions made in the communication channels;

(iii) Restricts posting of comments in the communication channels to those persons who have opened an account on its platform; and

(iv) Requires that any person posting a comment in the communication channels clearly disclose with each posting whether he or she is a founder or an employee of an issuer engaging in promotional activities on behalf of the issuer, or is otherwise compensated, whether in the past or prospectively, to promote an issuer's offering;

(5) Advise an issuer about the structure or content of the issuer's offering, including assisting the issuer in preparing offering documentation;

(6) Compensate a third party for referring a person to the funding portal, so long as the third party does not provide the funding portal with personally identifiable information of any potential investor, and the compensation, other than that paid to a registered broker or dealer, is not based, directly or indirectly, on the purchase or sale of a security in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) offered on or through the funding portal's platform;

(7) Pay or offer to pay any compensation to a registered broker or dealer for services in connection with the offer or sale of securities by the funding portal in reliance on Section 4(a)(6) of the Act(15 U.S.C. 77d(a)(6)), provided that:

(i) Such services are provided pursuant to a written agreement between the funding portal and the registered broker or dealer;

(ii) Such compensation is permitted under this part and is not otherwise prohibited under § 227.305; and

(iii) Such compensation complies with and is not prohibited by the rules of any registered national securities association of which the funding portal is required to be a member;

(8) Receive any compensation from a registered broker or dealer for services provided by the funding portal in connection with the offer or sale of securities by the funding portal in reliance on Section 4(a)(6) of the Act (15 U.S.C. 77d(a)(6)), provided that:

(i) Such services are provided pursuant to a written agreement between the funding portal and the registered broker or dealer;

(ii) Such compensation is permitted under this part; and

(iii) Such compensation complies with and is not prohibited by the rules of any registered national securities association of which the funding portal is required to be a member;

(9) Advertise the existence of the funding portal and identify one or more issuers or offerings available on the portal on the basis of objective criteria, as long as:

(i) The criteria are reasonably designed to identify a broad selection of issuers offering securities through the funding portal's platform, and are applied consistently to all potential issuers and offerings;

(ii) The criteria may include, among other things, the type of securities being offered (for example, common stock, preferred stock or debt securities); the geographic location of the issuer; the industry or business segment of the issuer; the expressed interest by investors, as measured by number or amount of investment commitments made, progress in meeting the issuer's target offering amount or, if applicable, the maximum offering amount; and the minimum or maximum investment amount; and

(iii) The funding portal does not receive special or additional compensation for identifying the issuer or offering in this manner;

(10) Deny access to its platform to, or cancel an offering of, an issuer that the funding portal believes may present the potential for fraud or otherwise raises investor protection concerns;

(11) Accept, on behalf of an issuer, an investment commitment for securities offered in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) by that issuer on the funding portal's platform;

(12) Direct investors where to transmit funds or remit payment in connection with the purchase of securities offered and sold in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)); and

(13) Direct a qualified third party, as required by § 227.303(e), to release proceeds to an issuer upon completion of a crowdfunding offering or to return proceeds to investors in the event an investment commitment or an offering is cancelled.

§ 227.403 Compliance.

(a) *Policies and Procedures.* A funding portal must implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal.

(b) *Anti-Money Laundering.* A funding portal must comply with the requirements of 31 CFR chapter X applicable to registered brokers.

(c) *Privacy.* A funding portal must comply with the requirements of 17 CFR 248 as they apply to brokers.

(d) *Inspections and Examinations.* A funding portal shall permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms, and records by representatives of the Commission and of the national securities association of which it is a member.

§ 227.404 Records to be made and kept by funding portals.

(a) *Generally.* A funding portal shall make and preserve the following records for five years, the first two years in an easily accessible place:

(1) All records related to an investor who purchases or attempts to purchase securities through the funding portal;

(2) All records related to issuers who offer and sell or attempt to offer and sell securities through the funding portal and the control persons of such issuers;

(3) Records of all communications that occur on or through its platform;

(4) All records related to persons that use communication channels provided by a funding portal to promote an issuer's securities or communicate with potential investors;

(5) All records required to demonstrate compliance with the requirements of Subparts C (§§ 227.300–305) and D (§§ 227.400–404);

(6) All notices provided by such funding portal to issuers and investors generally through the funding portal's platform or otherwise, including, but not limited to, notices addressing hours of funding portal operations (if any), funding portal malfunctions, changes to funding portal procedures, maintenance of hardware and software, instructions pertaining to access to the funding portal and denials of, or limitations on, access to the funding portal;

(7) All written agreements (or copies thereof) entered into by such funding portal relating to its business as such;

(8) All daily, monthly and quarterly summaries of transactions effected through the funding portal, including:

(i) Issuers for which the target offering amount has been reached and funds distributed; and

(ii) Transaction volume, expressed in:

(A) Number of transactions;

(B) Number of securities involved in a transaction;

(C) Total amounts raised by, and distributed to, issuers; and

(D) Total dollar amounts raised across all issuers, expressed in U.S. dollars; and

(9) A log reflecting the progress of each issuer who offers or sells securities through the funding portal toward meeting the target offering amount.

(b) *Organizational Documents.* A funding portal shall make and preserve during the operation of the funding portal and of any successor funding portal, all organizational documents relating to the funding portal, including but not limited to, partnership agreements, articles of incorporation or charter, minute books and stock certificate books (or other similar type documents).

(c) *Format.* The records required to be maintained and preserved pursuant to paragraph (a) of this section must be produced, reproduced, and maintained in the original, non-alterable format in which they were created or as permitted under 17 CFR 240.17a–4(f).

(d) *Third Parties.* The records required to be made and preserved pursuant to this section may be prepared or maintained by a third party on behalf of a funding portal. An agreement with a third party shall not relieve a funding portal from the responsibility to prepare and maintain records as specified in this rule. A funding portal must file with the registered national securities association of which it is a member, a written undertaking in a form acceptable to the registered national securities association, signed by a duly authorized

person of the third party, stating in effect that such records are the property of the funding portal and will be surrendered promptly on request of the funding portal. The undertaking shall include the following provision:

With respect to any books and records maintained or preserved on behalf of [name of funding portal], the undersigned hereby acknowledges that the books and records are the property of [name of funding portal], and hereby undertakes to permit examination of such books and records at any time, or from time to time, during business hours by representatives of the Securities and Exchange Commission and the national securities association of which the funding portal is a member, and to promptly furnish to the Commission, and the national securities association of which the funding portal is a member, a true, correct, complete and current hard copy of any, all, or any part of, such books and records.

(e) *Review of Records.* All records of a funding portal are subject at any time, or from time to time, to reasonable periodic, special, or other examination by the representatives of the Commission and the national securities association of which a funding portal is a member.

(f) *Financial Recordkeeping and Reporting of Currency and Foreign Transactions.* Every funding portal, as it is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 (15 U.S.C. 5311 *et seq.*), shall comply with the reporting, recordkeeping and record retention requirements of 31 CFR chapter X. Where 31 CFR chapter X and §§ 227.404(a) and 404(b) require the same records or reports to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

Subpart E—Miscellaneous Provisions

§ 227.501 Restrictions on resales.

(a) Securities issued in a transaction exempt from registration pursuant to Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) may not be transferred by the purchaser of such securities during the one-year period beginning on the date of purchase, unless such securities are transferred:

(1) To the issuer of the securities;

(2) To an accredited investor;

(3) As part of an offering registered with the Commission; or

(4) To a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance.

(b) For purposes of this § 227.501, the term *accredited investor* shall have the same meaning given to such term in 17 CFR 230.501. To transfer securities to an accredited investor during the one-year period beginning on the date the securities were issued in a transaction exempt from registration pursuant to Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), the seller shall reasonably believe that the person receiving such securities is an accredited investor.

(c) For purposes of this section, the term *member of the family of the purchaser or the equivalent* includes a child, stepchild, grandchild, parent, stepparent, grandparent, spouse or spousal equivalent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the purchaser, and shall include adoptive relationships.

Instruction to paragraph (c). For purposes of this paragraph (c), the term *spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

§ 227.502 Insignificant deviations from a term, condition or requirement of Regulation Crowdfunding.

(a) A failure to comply with a term, condition, or requirement of this part will not result in the loss of the exemption from the requirements of Section 5 of the Securities Act (15 U.S.C. 77e) for any offer or sale to a particular individual or entity, if the issuer relying on the exemption shows:

(1) The failure to comply was insignificant with respect to the offering as a whole;

(2) The issuer made a good faith and reasonable attempt to comply with all applicable terms, conditions and requirements this part; and

(3) The issuer did not know of such failure where the failure to comply with a term, condition or requirement of this part was the result of the failure of the intermediary to comply with the requirements of Section 4A(a) of the Securities Act (15 U.S.C. 77d–1(a)) and the related rules, or such failure by the intermediary occurred solely in offerings other than the issuer's offering.

(b) Notwithstanding the issuer's reliance on paragraph (a) of this section, the Commission may bring an enforcement action seeking any appropriate relief for the issuer's failure to comply with all applicable terms, conditions and requirements of this part.

§ 227.503 Disqualification

(a) No exemption under this Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, officer, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; or any general partner, director, officer or managing member of any such solicitor:

(1) Has been convicted, within 10 years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) that, at the time of such filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(3) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)), bars the person from:

(A) Association with an entity regulated by such commission, authority, agency or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct and for which the order was entered within the 10-year period ending on the date of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b));

Instruction to paragraph (a)(3). Final order shall mean a written directive or declaratory statement issued by a federal or state agency, described in § 227.503(a)(3), under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(4) Is subject to an order of the Commission entered pursuant to Section 15(b) or 15B(c) of the Exchange Act (15 U.S.C. 78*o*(b) or 78*o*–4(c)) or Section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)):

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) that, at the time of such filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation Section 17(a)(1) of the Securities Act (15 U.S.C. 77q(a)(1)), Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, Section 15(c)(1) of the Exchange Act (15 U.S.C. 78o(c)(1)) and Section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)) or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act (15 U.S.C. 77e);

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A (17 CFR 230.251 *et seq.*) offering statement filed with the Commission that, within five years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)), was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)), or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(b) Paragraph (a) of this section shall not apply:

(1) With respect to any conviction, order, judgment, decree, suspension, expulsion or bar that occurred or was issued before [effective date of final rule];

(2) Upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied;

(3) If, before the filing of the information required by Section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)), the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (b) of this section should not arise as a consequence of such order, judgment or decree;

(4) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (b) of this section.

Instruction to paragraph (b)(4). An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(c) For purposes of paragraph (a) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(1) In control of the issuer; or

(2) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

(d) A person that is subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act (15 U.S.C. 78c(a)(39)) may not act as, or be an associated person of, an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) unless so permitted pursuant to Commission rule or order.

Instruction to paragraph (d). 17 CFR 240.17f–2 generally requires the fingerprinting of every person who is a partner, director, officer or employee of a broker, subject to certain exceptions.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 4. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 781, 78m, 78n, 78o(d), 78w(a), 78ll, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

■ 5. Amend § 232.101 by:

■ a. In paragraph (a)(1)(xii) removing ''and'' at the end of the paragraph;

■ b. In paragraph (a)(1)(xiii) removing the period at the end of the paragraph and adding in its place a semicolon;

■ c. In paragraph (a)(1)(xvi) removing the period at the end of the paragraph and adding in its place ''; and''; and

■ d. Adding paragraph (a)(1)(xvii).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xvii) Form C (§ 239.900 of this chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 6. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

■ 7. Add § 239.900 to read as follows:

§ 239.900 Form C.

This form shall be used for filings under Regulation Crowdfunding.

Note: The text of Form C will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM C

UNDER THE SECURITIES ACT OF 1933

[ ] Form C: Offering Statement
[ ] Form C-U: Progress Update: _____
[ ] Form C-A: Amendment
[ ] Check box if Amendment is material and investors will have five business days to reconfirm
[ ] Form C-AR: Annual Report
[ ] Form C-TR: Termination of Reporting

Name of issuer: _____
Legal status of issuer (form, jurisdiction and date of organization): _____
Physical address of issuer: _____
Website of issuer: _____
Name, Commission file number and CRD number (as applicable) of intermediary through which the offering will be conducted:

_____
Amount of compensation paid to the intermediary, including referral and other fees: _____
Type of security offered: _____
Number of securities to be offered: _____
Price (or method for determining price): _____
Target offering amount: _____
Maximum offering amount (if different from target offering amount): _____
Oversubscriptions accepted: [ ] Yes [ ] No If yes, disclose how oversubscriptions will be allocated: [ ] Pro-rata basis [ ] First-come, first-served basis [ ] Other – provide a description

_____
Deadline to reach the target offering amount: _____
Current number of employees: _____

Total Assets:	Most recent fiscal year: _____	Prior fiscal year: _____
Cash & Cash Equivalents:	Most recent fiscal year: _____	Prior fiscal year: _____
Accounts Receivable:	Most recent fiscal year: _____	Prior fiscal year: _____
Short-term Debt:	Most recent fiscal year: _____	Prior fiscal year: _____
Long-term Debt:	Most recent fiscal year: _____	Prior fiscal year: _____
Revenues/Sales:	Most recent fiscal year: _____	Prior fiscal year: _____
Cost of Goods Sold:	Most recent fiscal year: _____	Prior fiscal year: _____
Taxes Paid:	Most recent fiscal year: _____	Prior fiscal year: _____
Net Income:	Most recent fiscal year: _____	Prior fiscal year: _____

BILLING CODE 8011–01–C

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form C

This Form shall be filed by any issuer offering or selling securities in reliance on the exemption in Securities Act Section 4(a)(6) and in accordance with Section 4A and Regulation Crowdfunding (§ 227.100–503). This Form also shall be used for an annual report required pursuant to Rule 202 of Regulation Crowdfunding (§ 227.202) and for the termination of reporting required pursuant to Rule 203(b)(2) of Regulation Crowdfunding (§ 227.203(b)(2)). Careful attention should be directed to the terms, conditions and requirements of the exemption.

II. Preparation and Filing of Form C

Information on the cover page will be generated based on the information provided in XML format. Other than the cover page, this Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of Form C. General information regarding the preparation, format and how to file this Form is contained in Regulation S–T, (§ 232 *et seq.*).

III. Information to be Included in the Form

Item 1. Offering Statement Disclosure Requirements

An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100–503) must file the Form prior to the commencement of the offering and include the information required by Rule 201 of Regulation Crowdfunding (§ 227.201).

Other than the information required to be provided in XML format, an issuer may provide the required information in the format included on the intermediary's platform, including by submitting copies of screen shots of the relevant information, as appropriate and necessary.

Item 2. Legends

(a) An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100–503) must include the following legends:

A crowdfunding investment involves a risk. You should not invest any funds in this offering unless you can afford to lose your entire investment.

In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document.

The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering document or literature.

These securities are offered under an exemption from registration; however, the U.S. Securities and Exchange Commission has not made an independent determination that these securities are exempt from registration.

(b) An issuer filing this Form for an offering in reliance on Section 4(a)(6) of the Securities Act and pursuant to Regulation Crowdfunding (§ 227.100–503) must disclose in the offering statement that it will file a report on EDGAR annually and post the report on its Web site, no later than 120 days after the end of each fiscal year covered by the report. The issuer must also disclose how an issuer may terminate its reporting obligations in the future in accordance with Rule 202(b) of Regulation Crowdfunding (§ 227.202(b)).

Item 3. Annual Report Disclosure Requirements

An issuer filing this Form for an annual report, as required by Regulation Crowdfunding (§ 227.100–503), must file the Form no later than 120 days after the issuer's fiscal year end covered by the report and include the information required by Rule 201(a), (b), (c), (d), (e), (f), (m), (p), (q), (r), (s), and (t) of Regulation Crowdfunding (§§ 227.201(a), (b), (c), (d), (e), (f), (m), (p), (q), (r), (s), and (t)). For purposes of paragraph (t), the issuer shall provide financial statements for the highest aggregate target offering amount previously provided in an offering statement.

SIGNATURE

Pursuant to the requirements of Sections 4(a)(6) and 4A of the Securities Act of 1933 and Regulation Crowdfunding (§ 227.100–503), the issuer certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form C and has duly caused this Form to be signed on its behalf by the duly authorized undersigned.

(Issuer)

By

(Signature and Title)

Pursuant to the requirements of Sections 4(a)(6) and 4A of the Securities Act of 1933 and Regulation Crowdfunding (§ 227.100–503), this Form C has been signed by the following persons in the capacities and on the dates indicated.

(Signature)

(Title)

(Date)

Instructions.

1. The form shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions.

2. The name of each person signing the form shall be typed or printed beneath the signature.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 et. seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

■ 9. Add § 240.12g–6 to read as follows:

§ 240.12g–6 Exemption for securities issued pursuant to Section 4(a)(6) of the Securities Act of 1933.

For purposes of determining whether an issuer is required to register a security with the Commission pursuant to Section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)), the definition of *held of record* shall not include securities issued pursuant to the offering exemption under Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 10. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 11. Add § 249.1500 to read as follows:

§ 249.1500 Form Funding Portal

This form shall be used for filings by funding portals under Regulation Crowdfunding (§§ 227.100 *et seq.*).

Note: The text of Form Funding Portal will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM FUNDING PORTAL

UNDER THE SECURITIES EXCHANGE ACT OF 1934

WARNING: Failure to complete this form truthfully, to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a funding portal, would violate the Federal securities laws and may result in disciplinary, administrative, injunctive or criminal action.

Check the appropriate box:
This is:

□ an initial application to register as a *funding portal* with the *SEC*.
□ an amendment to any part of the *funding portal's* most recent Form Funding Portal, including a successor registration.
□ a withdrawal of the *funding portal's* registration with the *SEC*.

Schedule A must be completed as part of all initial applications. Amendments to Schedule A must be provided on Schedule B.

Item 1 – Identifying Information

Exact name, principal business address, mailing address, if different, and telephone number of the funding portal:

A. Full name of the funding portal: _____

B. Name(s) under which business is conducted, if different from Item 1A:
_____

C. IRS Empl. Ident. No.: _____

D. If full legal name has changed since the *funding portal*'s most recent Form Funding Portal, enter the previous name and specify whether the name change is of the □ *funding portal* name (1A), or □ *business name* (1B).

Previous name: _____

E. Funding portal's main street address (Do not use a P.O. Box):
_____
_____

F. Mailing address(es) (if different) and office locations (if more than one) :

_____

_____

G. Contact Information
Telephone Number:_____
Facsimile number: _____
Website(s) URL: _____
E-mail:_____

H. Contact employee
Name:_____
Title:_____
Direct Telephone Number: _____
Facsimile:_____
Direct E-mail:_____

I. Registrations

Was the *applicant* previously registered on Form Funding Portal as a *funding portal* or with the Commission in any other capacity?

□ □ Yes SEC File No. _____
□ □ No

J. Foreign registrations

1. Is the *applicant* registered with a foreign financial regulatory authority?
Answer "no" even if affiliated with a business that is registered with a foreign financial regulatory authority.

□Yes □No

If "yes," complete Section J.2. below.

2. List the name, in English, of each *foreign financial regulatory authority* and country with which the *applicant* is registered. A separate entry must be completed for each *foreign financial regulatory authority* with which the *applicant* is registered.

Check only one box: ☐ Add ☐ Delete ☐ Amend

English Name of *Foreign Financial Regulatory Authority*

_____

Registration Number (if any) _____

Name of Country _____

Item 2 – Form of Organization

A. Indicate legal status of *applicant*. __Corporation __Sole Proprietorship __ Partnership __Limited Liability Company __Other (specify) _____

B. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (*i.e.*, state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation_____
Date of Formation_____

Item 3 – Successions

A. Is the *applicant* at the time of this filing succeeding to the business of a currently registered funding portal?

□ Yes □ No

Do not report previous successions already reported on Form Funding Portal. If "yes," complete Section 3.B. below.

B. Complete the following information if succeeding to the business of a currently-registered *funding portal*. If the *applicant* acquired more than one *funding portal* in the succession being reported on this Form Funding Portal, a separate entry must be completed for each acquired firm.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of Acquired *Funding Portal*

_____

Acquired *Funding Portal*'s *SEC* File No.: _____

A. Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor*.

_____

Item 4 – Control Persons

In this Item, identify every *person* that, directly or indirectly, *controls* the *applicant*, *controls* management or policies of the *applicant*, or that the *applicant* directly or indirectly *controls*.

_____

_____

If this is an initial application, the applicant also must complete Schedule A. Schedule A asks for information about direct owners and executive officers. If this is an amendment updating information reported on the Schedule A filed with the applicant's initial application, the applicant must complete Schedule B.

Item 5 – Disclosure Information

In this Item, provide information about the *applicant*'s disciplinary history and the disciplinary history of all associated persons of the *applicant*. This information is used to determine whether to approve an application for registration, to decide whether to revoke registration, to place limitations on the *applicant*'s activities as a funding portal, and to identify potential problem areas on which to focus during examinations. One event may result in the requirement to answer "yes" to more than one of the questions below.

If the answer is "yes" to any question in this Item, the *applicant* must complete the appropriate Disclosure Reporting Page ("DRP") – Criminal, Regulatory, Civil Judicial, Bankruptcy, Bond, Judgment – for which the corresponding DRP will pop-up automatically.

A. Criminal Action Disclosure

If the answer is "yes" to any question in Part A or B below, complete a Criminal Action DRP.

Check all that apply:

1. In the past ten years, has the *applicant* or any *associated person*:

(a) been convicted of any *felony*, or pled guilty or nolo contendere ("no contest") to any *charge* of a *felony*, in a domestic, foreign, or military court?

□Yes □ No

The response to the following question may be limited to charges that are currently pending:

(b) been *charged* with any *felony*?

□Yes □No

2. In the past ten years, has the *applicant* or any *associated person*:

(a) been convicted of any misdemeanor, or pled guilty or nolo contendere ("no contest"), in a domestic, foreign, or military court to any charge of a misdemeanor in a case involving: investment-related business, or any

fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

□Yes □No

The response to the following question may be limited to charges that are currently pending:

(b) been charged with a misdemeanor listed in Item 5-A(2)(a)?

□Yes □No

B. Regulatory Action Disclosure

If the answer is "yes" to any question in Item 5-B below, complete a Regulatory Action DRP.

Check all that apply:

1. Has the *SEC* or the Commodities Futures Trading Commission ("CFTC") ever:

(a) *found* the *applicant* or any *associated person* to have made a false statement or omission?

□Yes □No

(b) *found* the *applicant* or any *associated person* to have been *involved* in a violation of any *SEC* or *CFTC* regulation or statute?

□Yes □No

(c) *found* the *applicant* or any *associated person* to have been a cause of the denial, suspension, revocation, or restriction of the authorization of an *investment related* business to operate?

□Yes □No

(d) entered an *order* against the *applicant* or any *associated person* in connection with *investment-related* activity?

□Yes □No

(e) imposed a civil money penalty on the *applicant* or any *associated person*, or *ordered* the *applicant* or any *associated person* to cease and desist from any activity?

□Yes □No

2. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:

(a) ever *found* the *applicant* or any *associated person* to have made a false statement or omission, or been dishonest, unfair, or unethical?

□Yes □No

(b) ever *found* the *applicant* or any *associated person* to have been *involved* in a violation of *investment-related* regulations or statutes?

□Yes □No

(c) ever *found* the *applicant* or any *associated person* to have been the cause of a denial, suspension, revocation, or restriction of the authorization of an *investment-related* business to operate?

□Yes □No

(d) in the past ten years entered an *order* against the *applicant* or any *associated person* in connection with an *investment-related* activity?

□Yes □No

(e) ever denied, suspended, or revoked the registration or license of the *applicant* or that of any associated person, or otherwise prevented the *applicant* or any associated person of the *applicant*, by order, from associating with an investment-related business or restricted the activities of the *applicant* or any *associated person*?

□Yes □No

3. Has any self-regulatory organization or commodities exchange ever:

(a) found the *applicant* or any *associated person* to have made a false statement or omission?

□Yes □No

(b) found the *applicant* or any *associated person* to have been *involved* in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the *SEC*)?

□Yes □No

(c) found the *applicant* or any *associated person* to have been the cause of a denial, suspension, revocation or restriction of the authorization of an *investment-related* business to operate?

□Yes □No

(d) disciplined the *applicant* or any *associated person* by expelling or suspending the *applicant* or the *associated person* from membership, barring or suspending the *applicant* or *the associated person* from association with other members, or by otherwise restricting the activities of the *applicant* or the *associated person*?

□Yes □No

4. Has the *applicant* or any *associated person* ever had an authorization to act as an attorney, accountant, or federal contractor revoked or suspended?

□Yes □No

5. Is the *applicant* or any *associated person* currently the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 5-B(1), 5-B(2), or 5-B(3)?

□Yes □No

C. Civil Judicial Disclosure

If the answer is "yes" to a question below, complete a Civil Judicial Action DRP

Check all that apply:

1. Has any domestic or foreign court:

(a) in the past ten years *enjoined* the *applicant* or any *associated person* in connection with any *investment-related* activity?

□Yes □No

(b) ever *found* that the *applicant* or any *associated person* was *involved* in a violation of *investment-related* statutes or regulations?

□Yes □No

(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or any *associated person* by a state or *foreign financial regulatory authority*?

□Yes □No

2. Is the *applicant* or any *associated person* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 5-C(1)?

□Yes □No

3. In the past ten years, has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

(a) has been the subject of a bankruptcy petition?

□Yes □No

(b) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

□Yes □No

4. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?

□Yes □No

5. Does the *applicant* have any unsatisfied judgments or liens against it?

□Yes □No

Item 6 – Non-Securities Related Business

Does *applicant* engage in any non-securities related business?

□Yes □No

If "yes," briefly describe the non-securities business.

_____

_____

Item 7 - Escrow Arrangements; Compensation Arrangements; and Fidelity Bond

A. Escrow. Complete the following information for each person that will hold investor funds in escrow pursuant to the requirements of Rule 303(e) of Regulation Crowdfunding (17 CFR 24_.309).

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of person:_____
Address:_____
Phone Number: _____

B. Compensation. Please describe any compensation arrangements *funding portal* has with issuers.

_____

C. Fidelity Bond. Does *funding portal* maintain fidelity bond coverage that has a minimum coverage of $100,000, covers any associated person of the funding portal unless otherwise excepted in the rules set forth by FINRA or any other registered national securities association of which it is a member, and meets any other applicable requirements as set forth by FINRA or any applicable national securities association that is registered under Section 15A?

□Yes □No

If "yes," provide the following information.

Bonding Company Name:_____
Bonding Company Address:_____
Phone Number: _____
Policy #_____ Expiration Date:_____

Item 8 – Withdrawal

If this is a withdrawal of registration:

A. The date the *funding portal* ceased business or withdrew its registration request:

Date (MM/DD/YYYY): _____

B. Location of Books and Records after Registration Withdrawal

Complete the following information for each location at which the *applicant* will keeps books and records after withdrawing its registration.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name and address of entity where books and records are kept:

_____

_____

_____

(area code) (telephone number) (area code) (fax number)

This is (check one): ☐ one of *applicant*'s branch offices or affiliates.
☐ a third party unaffiliated recordkeeper.
☐ other.

If this address is a private residence, check this box: ☐

Briefly describe the books and records kept at this location.

_____

_____

_____

_____

C. Is the *funding portal* now the subject of or named in any investment-related

1. Investigation

□Yes □No

2. Investor initiated complaint

□Yes □No

3. Private civil litigation

□Yes □No

EXECUTION

The funding portal consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the funding portal's investment-related business may be given by registered or certified mail to the funding portal's contact person at the main address, or mailing address, if different, given in Items 1.E, 1.F., and 1.H. If the applicant is a nonresident funding portal, it must complete Schedule C to designate a U.S. agent for service of process.

The undersigned represents and warrants that he/she has executed this form on behalf of, and is duly authorized to bind, the funding portal. The undersigned and the funding portal represent that the information and statements contained herein and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and the funding portal further represent that, if this is an amendment, to the extent that any information previously submitted is not amended, such information is currently accurate and complete.

Date: _____

Full Legal Name of Funding Portal: _____

By _____
(signature)

Title: _____

FORM FUNDING PORTAL
SCHEDULE A

Direct Owners and Executive Officers

1. Complete Schedule A only if submitting an initial application. Schedule A asks for information about the *applicant*'s direct owners and executive officers. Use Schedule B to amend this information.

2. Direct Owners and Executive Officers. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director and any other individuals with similar status or functions;

   (b) if *applicant* is organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of the *applicant*'s voting securities, unless *applicant* is a public reporting company (a company subject to Section 13 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of 5% or more of a class of the *applicant*'s voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (c) if the *applicant* is organized as a partnership, <u>all</u> general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the *applicant*'s capital;

   (d) in the case of a trust, (i) a *person* that directly owns 5% or more of a class of the *applicant*'s voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant*'s capital, (ii) the trust and (iii) each trustee; and

   (e) if the *applicant* is organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the *applicant*'s capital, and (ii) if managed by elected managers, all elected managers.

3. In the DE/FE/NP column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "NP" if the owner or executive officer is a natural person.

4. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

5. Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more

6.

(a) In the *Control Affiliate* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form Funding Portal, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Section 13 or 15(d) of the Exchange Act.

(c) Complete each column.

FULL LEGAL NAME (**Natural Persons: Last Name, First Name, Middle Name**)	**DE/FE/NP**	**Title or Status**	**Date Title or Status Acquired**		**Ownership Code**	**Control Affiliate**		***CRD* No.** (**If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.**)
			MM	YYYY		Yes/No	PR	

FORM FUNDING PORTAL
SCHEDULE B

Amendments to Schedule A

1. Use Schedule B only to amend information requested on Schedule A. Refer to Schedule A for specific instructions for completing this Schedule B. Complete each column. File with a completed Execution Page.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are:

NA - less than 5%
A - 5% but less than 10%
B - 10% but less than 25%
C - 25% but less than 50%
D - 50% but less than 75%
E - 75% or more
G - Other (general partner, trustee, or elected member)

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Natural Persons: Last Name, First Name, Middle Name)	**DE/FE/NP**	**Type of Amend-ment**	**Title or Status**	**Date Title or Status Acquired**		**Ownership Code**	***Control Affiliate***		***CRD* No. (If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.)**
				MM	YYYY		Yes/No	PR	

Schedule C of FORM FUNDING PORTAL
Nonresident Funding Portals

Applicant Name:

Date:_____ SEC File No:

Official Use

Service of Process and Certification Regarding Access to Records

Each nonresident funding portal applicant shall use Form to identify its United States agent for service of process and to certify that it can

(1) provide the Commission and the national securities association of which it is a member with prompt access to its books and records, and (2) submit to onsite inspection and examination by the Commission.

1. Service of Process:

A. Name of United States person *applicant* designates and appoints as agent for service of process

B. Address of United States person *applicant* designates and appoints as agent for service of process

The above identified agent for service of process may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission that relates to the *applicant* or about which the

applicant may have information; and

(b) any civil or criminal suit or action or proceeding brought against the *applicant* or to which the *applicant* has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, to enforce the Exchange Act. The *applicant* has stipulated and agreed that any such suit, action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, the above-named Agent for Service of Process, and that service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made.

2.

Certification regarding access to records:

Applicant can as a matter of law;

(1) provide the Commission and any national securities association of which it is a member with prompt access to its books and records, and

(2) submit to onsite inspection and examination by the Commission.

Applicant must attach to this Form Funding Portal a copy of the opinion of counsel it is required to obtain in accordance with Rule 400(g) of Regulation Crowdfunding.

Signature:

Name and Title:

Date:

CRIMINAL ACTION DISCLOSURE REPORTING PAGE (FP)

General Instructions

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-A of Form Funding Portal.

Check item(s) being responded to: ☐ 5-A(1)(a) ☐ 5-A(1)(b) ☐ 5-A(2)(a) ☐ 5-A(2)(b)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same *charge* arising out of the same event(s) should be reported on the same DRP. Use this DRP to report all *charges* arising out of the same event. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. One event may result in more than one affirmative answer to the items listed above.

Part 1

Check all that apply:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ *Applicant*
☐ *Applicant* and one or more *associated persons*
☐ One or more of *applicant*'s *associated persons*

If this DRP is being filed for the *applicant*, and it is an amendment that seeks to remove a DRP concerning the *applicant* from the record, the reason the DRP should be removed is:

☐ The *applicant* is registered or applying for registration, and the event or *proceeding* was resolved in the *applicant*'s favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is (are) no longer associated with the *applicant*.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The event or *proceeding* occurred more than ten years ago.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Part 2

1. If *charge*(s) were brought against a firm or organization over which the *applicant* or an *associated person* exercised *control*:

Enter the firm or organization's name _____

Was the firm or organization engaged in an *investment-related* business? ☐ Yes ☐ No

What was the relationship of the *applicant* with the firm or organization? (In the case of an *associated person*, include any position or title with the firm or organization.)

_____

2. Formal *charge*(s) were brought in: (include the name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, and Docket/Case number).

Name of court: _____
Location: _____
Docket/Case number: _____

3. Event Disclosure Detail (Use this for both organizational and individual *charges*.)

A. Date First *Charged* (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

B. Event Disclosure Detail (include *charge*(s)/*charge* Description(s), and for each *charge* provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each *charge*, and (4) product type if *charge* is *investment-related*).

_____

C. Did any of the *charge*(s) within the event *involve* a *felony*? ☐ Yes ☐ No

D. Current status of the event? ☐ Pending ☐ On Appeal ☐ Final

E. Event status date (Complete unless status is pending) (MM/DD/YYYY):

_____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

4. Disposition Disclosure Detail: Include for each *charge* (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

_____

5. Provide a brief summary of circumstances leading to the *charge*(s) as well as the disposition. Include the relevant dates when the conduct that was the subject of the *charge*(s) occurred. (The response must fit within the space provided.)

_____

_____

REGULATORY ACTION DISCLOSURE REPORTING PAGE (FP)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-B of Form Funding Portal.

Check item(s) being responded to: ☐ 5-B(1)(a) ☐ 5-B(1)(b) ☐ 5-B(1)(c) ☐ 5-B(1)(d) ☐ 5-B(1)(e) ☐ 5-B(2)(a) ☐ 5-B(2)(b) ☐ 5-B(2)(c) ☐ 5-B(2)(d) ☐ 5-B(2)(e) ☐ 5-B(3)(a) ☐ 5-B(3)(b) ☐ 5-B(3)(c) ☐ 5-B(3)(d) ☐ 5-B(4) ☐ 5-B(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 5-B(1), 5-B(2), 5-B(3), 5-B(4) or 5-B(5). Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

Part 1

The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ *Applicant* (the *funding portal*)
☐ *Applicant* and one or more of the *applicant*'s *associated person*(s)
☐ One or more of *applicant*'s *associated person*(s)

If this DRP is being filed for the *applicant* and it is an amendment that seeks to remove a DRP concerning the *applicant* from the record, the reason the DRP should be removed is:

☐ The *applicant* is registered or applying for registration, and the event or *proceeding* was resolved in the *applicant*'s favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is (are) no longer associated with the *applicant*.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____
_____

Part 2

1. Regulatory Action was initiated by:

☐ *SEC* ☐ Other Federal Authority ☐ State ☐ *SRO* ☐ Foreign Authority

(Full name of regulator, *foreign financial regulatory authority*, federal authority, state or *SRO*)

_____
_____
_____

2. Principal Sanction (check appropriate item):

☐ Civil and Administrative Penalty(ies)/Fine(s) ☐ Disgorgement ☐ Restitution

☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____
_____
_____
_____

4. Docket/Case Number: _____

5. *Associated person*'s Employing Firm when activity occurred that led to the regulatory action (if applicable):

_____

_____

_____

6. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed ☐ Derivative(s) ☐ Investment Contract(s)
☐ Annuity(ies) - Variable ☐ Direct Investment(s) - DPP & LP Interest(s)
☐ Money Market Fund(s) ☐ No Product
☐ CD(s) ☐ Equity - OTC ☐ Mutual Fund(s)
☐ Commodity Option(s) ☐ Equity Listed (Common & Preferred Stock)
☐ Debt - Asset Backed ☐ Futures - Commodity ☐ Options
☐ Debt - Corporate ☐ Futures - Financial ☐ Penny Stock(s)
☐ Debt - Government ☐ Index Option(s) ☐ Unit Investment Trust(s)
☐ Debt - Municipal ☐ Insurance ☐ Other

Other Product Types:

_____

_____

_____

7. Describe the allegations related to this regulatory action. (The response must fit within the space provided.)

_____

_____

_____

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, to whom the regulatory action was appealed (*SEC*, *SRO*, Federal or State Court) and date appeal filed:

_____

_____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved (check appropriate item):

☐ Acceptance, Waiver & Consent (AWC) ☐ Dismissed ☐ Vacated
☐ Consent ☐ *Order* ☐ Withdrawn
☐ Decision ☐ Settled ☐ Other
☐ Decision & *Order* of Offer of Settlement ☐ Stipulation and Consent

11. Resolution Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $_____ ☐ Censure ☐ Cease and Desist/Injunction
☐ Bar ☐ Suspension

B. Other Sanctions *Ordered*:

_____

_____

C. Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the *applicant* or an *associated person*, date paid and if any portion of penalty was waived:

_____

_____

13. Provide a brief summary of details related to the action status and (or) disposition, and include relevant terms, conditions and dates.

_____

_____

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (FP)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-C. of Form Funding Portal.

Check item(s) being responded to: ☐ 5-C(1)(a) ☐ 5-C(1)(b) ☐ 5-C(1)(c) ☐ 5-C(2) ☐ 5-C(3)(a) ☐ 5-C(3)(b)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 5-C. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

Part 1

The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ *Applicant* (the *funding portal*)
☐ *Applicant* and one or more of the *applicant*'s *associated person*(s)
☐ One or more of the *applicant*'s *associated person*(s)

If this DRP is being filed for the *applicant* and it is an amendment that seeks to remove a DRP concerning the *applicant* from the record, the reason the DRP should be removed is:

☐ The *applicant* is registered or applying for registration, and the event or *proceeding* was resolved in the *applicant*'s favor.
☐ The DRP was filed in error.

If this DRP is being filed for an *associated person*:

This *associated person* is: ☐ a firm ☐ a natural person
The *associated person* is: ☐ registered with the *SEC* ☐ not registered with the *SEC*

Full name of the *associated person* (including, for natural persons, last, first and middle names):

_____

If the *associated person* has a *CRD* number, provide that number. _____

If this is an amendment that seeks to remove a DRP concerning the *associated person*, the reason the DRP should be removed is:

☐ The *associated person*(s) is (are) no longer associated with the *applicant*.
☐ The event or *proceeding* was resolved in the *associated person*'s favor.
☐ The DRP was filed in error. Explain the circumstances:

_____

_____

Part 2

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

2. Principal Relief Sought (check appropriate item):

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint)
☐ Restraining Order ☐ Civil Penalty(ies)/Fine(s)
☐ Injunction ☐ Restitution
☐ Other _____

Other Relief Sought:_____

3. Filing Date of Court Action (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed ☐ Derivative(s) ☐ Investment Contract(s)
☐ Annuity(ies) - Variable ☐ Direct Investment(s) - DPP & LP Interest(s)
☐ Money Market Fund(s) ☐ CD(s) ☐ Equity - OTC
☐ Mutual Fund(s) ☐ Commodity Option(s) ☐ No Product
☐ Equity Listed (Common & Preferred Stock) ☐ Options
☐ Debt - Asset Backed ☐ Futures - Commodity ☐ Penny Stock(s)
☐ Debt - Corporate ☐ Futures - Financial ☐ Unit Investment Trust(s)
☐ Debt - Government ☐ Index Option(s) ☐ Other
☐ Debt - Municipal ☐ Insurance

Other Product Types:

_____

5. Formal Action was brought in (include the name of the Federal, State or Foreign Court, Location of Court - City or County and State or Country, and Docket/Case Number):

_____

6. *Associated person*'s Employing Firm when activity occurred that led to the civil judicial action (if applicable):

_____

7. Describe the allegations related to this civil action (the response must fit within the space provided):

_____

_____

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, court to which the action was appealed (provide name of the court) and Date Appeal Filed (MM/DD/YYYY):

_____

_____

10. If pending, date notice/process was served (MM/DD/YYYY): _____

☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled ☐ Dismissed ☐ Opinion
☐ Withdrawn ☐ Other _____

12. Resolution Date (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

13. Resolution Detail:

A. Were any of the following Sanctions *Ordered* or Relief Granted (check appropriate items)?

☐ Monetary/Fine Amount: $_____ ☐ Revocation/Expulsion/Denial ☐ Censure ☐ Bar ☐ Disgorgement/Restitution ☐ Cease and Desist/Injunction ☐ Suspension

B. Other Sanctions *Ordered*:

_____

_____

_____

C. Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against the *applicant* or an *associated person*, date paid and if any portion of penalty was waived:

_____

_____

_____

_____

_____

_____

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above.

_____

_____

_____

BANKRUPTCY/SIPC DISCLOSURE REPORTING PAGE (FP)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-C(3) of Form Funding Portal.

Check item(s) being responded to: ☐ 5-C(3)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 5-C(3). Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

Part 1

Check all that apply:

A. The *person*(s) or entity(ies) for whom this DRP is being filed is (are) the:

☐ *Applicant*
☐ *Applicant* and one or more *control affiliates*
☐ One or more of *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered'' by checking the appropriate checkbox.

FP DRP - CONTROL AFFILIATE

_____
Control *Affiliate CRD Number* This *control affiliate* is: ☐ a firm ☐ a natural person

Registered: ☐ Yes ☐ No

Full name of the *control affiliate* (including, for natural persons, last, first and middle names):

_____

☐ This is an amendment that seeks to remove a DRP record because the *control affiliate(s)* is (are) no longer associated with the funding portal.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes,'' no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this Form does not relieve the *control affiliate* of its obligation to update its CRD records.

Part 2

1. Action Type: (check appropriate item)

☐ Bankruptcy ☐ Declaration ☐ Receivership

☐ Compromise ☐ Liquidated ☐ Other_____

2. Action Date (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

   If not exact, provide explanation:_____

3. If the financial action relates to an organization over which the *applicant* or *control affiliate* exercise(d) *control*, enter organization name and the *applicant's* or *control affiliate's* position, title or relationship:

   _____

   Was the Organization investment-related? ☐ Yes ☐ No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

   _____

5. Is action currently pending? ☐ Yes ☐ No

6. If not pending, provide Disposition Type: (check appropriate item)

   ☐ Direct Payment Procedure ☐ Dismissed ☐ Satisfied/Released
   ☐ Discharged ☐ Dissolved ☐ SIPA Trustee Appointed

☐ Other _____

7. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action, and if not discharged, explain. (The information must fit within the space provided.):_____

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid by you; or the name of trustee:_____

Currently Open? ☐ Yes ☐ No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY):_____

☐ Exact ☐ Explanation

If not exact, provide explanation:_____

10. Provide details to any status disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable):_____

BOND DISCLOSURE REPORTING PAGE (FP)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-C(4) of Form Funding Portal.

Check item(s) being responded to: ☐ 5-C(4)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 5-C(4). Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

1. Firm Name: (Policy Holder)

_____

_____

2. Bonding Company Name:

_____

_____

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

_____

_____

_____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

_____

_____

_____

6. Summarize the details of circumstances leading to the necessity of the bonding company action:

_____
_____
_____
_____
_____

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (FP)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP FP) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 5-C(5) of Form Funding Portal.

Check item(s) being responded to: ☐ 5-C(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page. One event may result in more than one affirmative answer to Item 5-C(5). Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

1. Judgment/Lien Amount:_____
2. Judgment/Lien Holder:_____

3. Judgment/Lien Type: (check appropriate item)

☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY):_____ ☐ Exact ☐ Explanation

If not exact, provide explanation:_____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If No, provide explanation:_____

If No, how was matter resolved? (check appropriate item)

☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details, including current status (if applicable):_____

BILLING CODE 8011–01–C

FORM FUNDING PORTAL INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. EXPLANATION OF FORM

• This is the form that a funding portal must use to register with the Securities and Exchange Commission (''SEC'' or ''Commission''), to amend its registration and to withdraw from registration.

• The Commission may make publicly accessible all current Forms Funding Portal, including amendments and registration withdrawal requests, which may be searchable by the public, with the exception of certain personally identifiable information or other information with significant potential for misuse (including the contact employee's direct phone number and email address and any IRS Employer Identification Number, social security number, date of birth, or any other similar information).

2. WHEN TO FILE FORM FUNDING PORTAL

• A funding portal's registration must become effective before offering or selling any securities in reliance on Section 4(a)(6) through a platform. Under Rule 400, a funding portal's registration will be effective the later of: (1) 30 calendar days after the date a complete Form Funding Portal is received by the Commission or (2) the date the funding portal is approved for membership by a national securities association registered under Section 15A of the Securities Exchange Act of 1934 (''Exchange Act'').

• A registered funding portal must promptly file an amendment to Form Funding Portal when any information previously submitted on Form Funding Portal becomes inaccurate or incomplete for any reason.

• A successor funding portal may succeed to the registration of a registered funding portal by filing a

registration on Form Funding Portal within 30 days after the succession.

• If a funding portal succeeds to and continues the business of a registered funding portal and the succession is based solely on a change of the predecessor's date or state of incorporation, form of organization, or composition of a partnership or similar reason, the successor may, within 30 days of the succession, amend the registration on Form Funding Portal to reflect these changes.

• A funding portal must also file a withdrawal on Form Funding Portal promptly upon ceasing to operate as a funding portal. Withdrawal will be effective on the later of 30 days after receipt by the Commission, after the funding portal is no longer operational, or within such longer period of time as to which the funding portal consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors.

• A Form Funding Portal filing will not be considered complete unless it complies with all applicable requirements.

3. ELECTRONIC FILING—The *applicant* must file Form Funding Portal electronically using the web-enabled system, and must utilize this system to file and amend Form Funding Portal electronically to assure the timely acceptance and processing of those filings.

4. CONTACT EMPLOYEE—The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.

5. FEDERAL INFORMATION LAW AND REQUIREMENTS

• The principal purpose of this form is to provide a mechanism by which a funding portal can register with the Commission, amend its registration and withdraw from registration. The Commission maintains a file of the information on this form and will make certain information collected through the form publicly available. The SEC will not accept forms that do not include the required information.

• Section 4A(a) of the Securities Act of 1933 [15 U.S.C. § 77d–1(a)] and Sections 3(h) and 23(a) the Exchange Act [15 U.S.C. §§ 78c(h) and 78w(a)] authorize the SEC to collect the information required by Form Funding Portal. The SEC collects the information for regulatory purposes. Filing Form Funding Portal is mandatory for persons that are registering as funding portals with the SEC.

• Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on this Form and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the **Federal Register** the Privacy Act Systems of Records Notice for these records.

B. FILING INSTRUCTIONS

1. FORMAT

• Items 1–7 must be answered and all fields requiring a response must be completed before the filing will be accepted. Item 8 must be answered if the funding portal wishes to withdraw from registration.

• *Applicant* must complete the execution screen certifying that Form Funding Portal and amendments thereto have been executed properly and that the information contained therein is accurate and complete.

• To amend information, the *applicant* must update the appropriate Form Funding Portal screens.

• A paper copy, with original manual signatures, of the initial Form Funding Portal filing and amendments to Disclosure Reporting Pages must be retained by the *applicant* and be made available for inspection upon a regulatory request.

2. DISCLOSURE REPORTING PAGES (DRP)—Information concerning the *applicant* or control affiliate that relates to the occurrence of an event reportable under Item 5 must be provided on the *applicant's* appropriate DRP (FP). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP. Details for the event must be submitted on the *control affiliate's* appropriate DRP or DRP(U–4). If a *control affiliate* is an individual or organization *not* registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP (FP) screen.

3. DIRECT OWNERS—Amend the Direct Owners and Executive Officers screen when changes in ownership occur.

4. NONRESIDENT APPLICANTS—Any applicant that is a nonresident funding portal must complete Schedule C and attach the opinion of counsel referred to therein.

C. EXPLANATION OF TERMS

1. GENERAL

APPLICANT—The funding portal applying on or amending this form.

ASSOCIATED PERSON—Any partner, officer, director or manager of the funding portal (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling or controlled by the funding portal, or any employee of the funding portal, except that any person associated with a funding portal whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of the Exchange Act (other than paragraphs (4) and (6) thereof).

CONTROL—The power, directly or indirectly, to direct the management or policies of the funding portal, whether through contract, or otherwise. A person is presumed to control a funding portal if that person: (1) is a director, general partner or officer exercising executive responsibility (or has a similar status or functions); (2) directly or indirectly has the right to vote 25 percent or more of a class of a voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the funding portal; or (3) in the case of a partnership, has contributed, or has a right to receive, 25 percent or more of the capital of the funding portal. (This definition is used solely for the purposes of Form Funding Portal).

CONTROL AFFILIATE—A person named in Item 4 [as a control person] or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant,* including any current employee of the *applicant* except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

FOREIGN FINANCIAL REGULATORY AUTHORITY—Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *investment* or *investment-related* activities*;* and (3) a foreign membership organization, a function of which is to

regulate the participation of its members in the activities listed above.

FUNDING PORTAL—A broker acting as an intermediary in a transaction involving the offer or sale of securities offered and sold in reliance on Section 4(a)(6), that does not, directly or indirectly: (1) offer investment advice or recommendations; (2) solicit purchases, sales or offers to buy the securities displayed on its platform; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform; or (4) hold, manage, possess, or otherwise handle investor funds or securities.

JURISDICTION—Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, any other territory of the United States, or any subdivision or regulatory body thereof.

NONRESIDENT FUNDING PORTAL—A funding portal incorporated in or organized under the laws of a jurisdiction outside of the United States or its territories, or having its principal place of business in any place not in the United States or its territories.

PERSON—An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION (SRO)—The Financial Industry Regulatory Authority (''FINRA'') or any other national securities association registered with the Commission or any national securities exchange or registered clearing agency, as such terms are defined in Section 3 of the Exchange Act.

SUCCESSOR—A funding portal that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor funding portal that ceases its funding portal activities. See Rule 400(c) of Regulation Crowdfunding (17 CFR 24_.400(c)).

2. FOR THE PURPOSE OF ITEM 5

CHARGED—Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ENJOINED—Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or temporary restraining order.

FELONY—For jurisdictions that do not differentiate between a felony and a misdemeanor, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

FOUND—Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

INVESTMENT OR INVESTMENT-RELATED—Pertaining to securities, commodities, banking, savings association activities, credit union activities, insurance, or real estate (including, but not limited to, acting as or being associated with a funding portal broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, security-based swap dealer, major security-based swap participant, savings association, credit union, insurance company, or insurance agency).

INVOLVED—Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

MINOR RULE VIOLATION—A violation of a self-regulatory organization rule that has been designated as ''minor'' pursuant to a plan approved by the SEC or Commodity Futures Trading Commission. A rule violation may be designated as ''minor'' under a plan if the sanction imposed consists of a fine of $2,500 or less and if the sanctioned person does not contest the fine. (Check with the appropriate self-regulatory organization to determine if a particular rule violation has been designated as ''minor'' for these purposes).

MISDEMEANOR—For jurisdictions that do not differentiate between a felony and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

ORDER—A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an order.

PROCEEDING—Includes a formal administrative or civil action initiated by a governmental agency, self-regulatory organization or a foreign financial regulatory authority; a felony criminal indictment or information (or equivalent formal charge); or a misdemeanor criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).[End follow lit]

Dated: October 23, 2013.
By the Commission.

Elizabeth M. Murphy,

Secretary.

Note: The following exhibit will not appear in the Code of Federal Regulations.

Exhibit A

Comments Letters Received Regarding Title III of the JOBS Act

Proposal to Implement Regulation Crowdfunding (File No. S7–09–13)

ABA Letter 1: Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association, Mar. 20, 2013

ABA Letter 2: Letter from Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, American Bar Association, Jun. 26, 2013

ACA Letter: Letter from Divina K. Westerfield, Esq., Manager, American Crowdfunding Association Inc., Oct. 8, 2013

ACFIA Letter 1: Letter from John Vassilliw, American Crowdfunding Investment Association, Dec. 15, 2012

ACFIA Letter 2: Letter from John Vassilliw, American Crowdfunding Investment Association, Jan. 3, 2013

ACFIA Letter 3: Letter from John Vassilliw, American Crowdfunding Investment Association, Jan. 3, 2013

Acos Letter: Letter from Jim Acos, Jun. 10, 2012

AKickInCrowd.com Letter: Letter from Tony Reynolds, Founder, AKickInCrowd.Com, May 11, 2012

Alabama Development Office Letter: Letter from S. Douglas Smith, Founding Director of the Alabama Development Office and the Alabama Department of Economic and Community Affairs, Oct. 22, 2012

ASBC Letter: Letter from American Sustainable Business Council, Jul. 16, 2012

AngelList Letter: Letter from Naval Ravikant, CEO, AngelList, May 23, 2012

AppleSeedz Letter: Letter from EL Mazyck, President, AppleSeedz.com, Jul. 23, 2012

Applied Dynamite Letter: Letter from Randall Lucas, CEO, Applied Dynamite Inc., May 4, 2012

ARS Letter: Letter from Mark Norych, Esq., Executive Vice President, General Counsel, Board Member,

Arbitration Resolution Services, Inc., Jul. 19, 2013
Arctic Island Letter: Letter from Scott Purcell, Founder, Arctic Island Crowdfunding Portal, Jun. 26, 2012
Ayeni Letter: Letter from Debo Ayeni, Dec. 23, 2012
Bach Letter: Letter from David Bach, Apr. 18, 2012
Barnes Letter: Letter from Ryan Barnes, Aug. 22, 2012
Basko Letter: Letter from Sue Basko, Lawyer, Jun. 18, 2012
Becotte Letter: Letter from Chase Becotte, Aug. 31, 2012
Bedford Letter: Letter from Shante Jones, Vice President, Bedford Stuvyesant Unity Youth Resources, Inc., Feb. 14, 2013
BeFounders Letter: Letter from William J. Mills, JD, BeFounders, Apr. 24, 2012
Begich Letter: Letter from Sen. Mark Begich, U.S. Senator, Jul. 18, 2013
Bennet Letter: Letter from Sen. Michael F. Bennet, U.S. Senator, Dec. 12, 2012
Black Letter: Letter from Michael Black, Nov. 4, 2012
Blechman Letter: Letter from Bruce Blechman, Apr. 13, 2012
BlueTree Letter: Letter from Catherine V. Mott, Founder, BlueTree Allied Angels, Aug. 21, 2012
BrainThrob Laboratories Letter: Letter from Erin C. DeSpain, President, BrainThrob Laboratories, Inc., Nov. 8, 2012
Brandon W Letter: Letter from Brandon W., Apr. 16, 2012
Buffalo First Letter: Letter from Kelly A. Maurer, Treasurer, Buffalo First Member, Buffalo Common Wealth LLC Assistant Treasurer, Buffalo Cooperative FCU, Apr. 16, 2012
Bulldog Investors Letter: Letter from Philip Goldstein, Bulldog Investors, Jul. 18, 2012
Cera Technology Letter: Letter from Michael Mace, CEO, Cera Technology, Apr. 13, 2012
CFA Institute Letter: Letter from Kurt N. Schacht and Linda L. Rittenhouse, CFA Institute, Aug. 16, 2012
CFIRA Letter 1: Letter from Sherwood E. Neiss, Crowdfund Investing Regulatory Advocates (CFIRA), May 15, 2012
CFIRA Letter 2: Letter from Candace S. Klein, Chair and Vincent R. Molinari, Co-Chair, CFIRA, May 30, 2012
CFIRA Letter 3: Letter from Candace S. Klein, Chair and Vincent R. Molinari, Co-Chair, CFIRA, Jun. 5, 2012
CFIRA Letter 4: Letter from Kim Wales and Christine Landon, CFIRA, Aug. 9, 2012
CFIRA Letter 5: Letter from Kim Wales, Founding member, and DJ Paul, Founding Member & CSO, CFIRA, Aug. 22, 2012
CFIRA Letter 6: Letter from Lon David Varvel, Founding Member, CFIRA, Sept. 14, 2012
CFIRA Letter 7: Letter from Chris Tyrrell, Kim Wales and Charles Sidman, Founding Members, CFIRA, Oct. 10, 2012
CFIRA Letter 8: Letter from Chris Tyrrell, Kim Wales and Charles Sidman, Founding Members, CFIRA, Oct. 29, 2012
CFIRA Letter 9: Letter from Kim Wales, Founding Member, CFIRA, Nov. 26, 2012
CFIRA Letter 10: Letter from Scott Purcell, Board Member, CFIRA, Dec. 3, 2012
CFIRA Letter 11: Letter from Kim Wales, Founding Member, CFIRA, Dec. 4, 2012
CFIRA Letter 12: Letter from CFIRA, Jan. 21, 2013
CFIRA Letter 13: Letter from Ryan Feit, Co-Founder & CEO, SeedInvest, and Kim Wales, Founding Member, CFIRA, Mar. 11, 2013
City First Letter: Letter from John Hamilton, President, City First Enterprises, Jul. 4, 2013
CitySpark Letter: Letter from David B. Haynie, CitySpark.com, Apr. 25, 2012
Coan Letter: Letter from Marc C. Coan, Apr. 11, 2012
Coleman Letter: Letter from Matthew R. Nutting, Esq., Coleman & Horowitt, LLP, Jan. 28, 2013
Commonwealth of Massachusetts Letter: Letter from William F. Galvin, Secretary of the Commonwealth, Massachusetts, Aug. 8, 2012
CommunityLeader Letter: Letter from Richard Weintraub, Chief Compliance Officer, CommunityLeader, Aug. 17, 2012
CompTIA Letter: Letter from Lamar Whitman, Director, Public Advocacy, CompTIA, Jun. 28, 2012
Cones Letter: Letter from John Cones, Apr. 19, 2012
Corporate Resolutions Letter: Letter from Joelle Scott, Director of Business Intelligence, Corporate Resolutions Inc., Apr. 19, 2012
Crowd Startup Capital Letter: Letter from Travis E. Chapman, Esq., Crowd Startup Capital, May 11, 2012
CrowdCheck Letter 1: Letter from Sara Hanks, CEO, CrowdCheck, Inc., Apr. 30, 2012
CrowdCheck Letter 2: Letter from Brian Knight, Vice President, CrowdCheck, Inc., Dec. 5, 2012
CrowdFund Capital Markets Letter: Letter from Robert J. Thibodeau, President, CrowdFund Capital Markets, May 7, 2012
CrowdFund Connect Letter: Letter from J. Randy Shipley, Founder, CrowdFund Connect, Social Gravity Inc., Jul. 28, 2012
Crowdfunding Offerings Ltd. Letter 1: Letter from Anthony D. Edwards, Esq., Founder, Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 2: Letter from Marshall Neel, Esq., Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 3: Letter from Marshall Neel, Esq., Co-Founder, Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 4: Letter from Marshall Neel, Esq., Co-Founder, Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 5: Letter from Anthony D. Edwards, Esq., Founder, Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 6: Letter from Anthony D. Edwards, Esq., Founder, Crowdfunding Offerings, Ltd., May 11, 2012
Crowdfunding Offerings Ltd. Letter 7: Letter from Marshall Neel, Esq., Co-Founder, Crowdfunding Offerings, Ltd., Aug. 15, 2012
Crowdlever Letter 1: Letter from Matt Morse, Sr., Feb. 1, 2013
Crowdlever Letter 2: Letter from Matt Morse, Sr., Apr. 15, 2013
Cunningham Letter: Letter from William Michael Cunningham, AM, MBA, Jan. 15, 2013
CyberIssues.com Letter: Letter from T.W. Kennedy, BE, CEO of CyberIssues.com, Jun. 28, 2013
Dex Offshore Letter 1: Letter from David E. Simpson, CFA, Founder, CEO of Dex Offshore Entertainment LLC, Apr. 14, 2012
Dex Offshore Letter 2: Letter from David E. Simpson, Dex Offshore Entertainment LLC, Apr. 16, 2012
Dex Offshore Letter 3: Letter from David Simpson, Dex Offshore Entertainment LLC, Jul. 23, 2012
Dex Offshore Letter 4: Letter from David Simpson, Dex Offshore Entertainment LLC, Jul. 24, 2012
Donovan Letter: Letter from Doug Donovan, Oct. 1, 2012
Donovan P. Letter: Letter from Patrick Donovan, Sep. 27, 2013
Durward Letter: Letter from James Durward, May 7, 2012
EarlyShares Letter 1: Letter from Maurice Lopes, CEO, EarlyShares.com, Inc., Jul. 10, 2012
EarlyShares Letter 2: Letter from Maurice Lopes, CEO, EarlyShares.com, Inc., Aug. 16, 2012
EnVironmental Letter: Letter from Richard W. Marks, President, EnVironmental Transportation Solutions, LLC, Jun. 14, 2012
Equistratus Letter: Letter from T.H. Ison, Equistratus, Mar. 22, 2013.

Escrow.com Letter: Letter from Brandon Abbey, President and Managing Director, Escrow.com, Aug. 31, 2012
ExpertBeacon Letter: Letter from Mark Law, CEO, ExpertBeacon.com, Seattle, Washington, Apr. 14, 2012
Fairhurst Letter: Letter from Kraig Fairhurst, Apr. 11, 2012
Feldman Letter: Letter from Aleksandr Feldman, Aug. 17, 2012
Ferguson Letter: Letter from Zachary Ferguson, Jun. 13, 2013
Franken Letter: Letter from Sen. Al Franken, U.S. Senator, Jan. 4, 2013
Frankfurt Letter: Letter from Thomas Selz, *et al.,* Frankfurt Kurnit Klein & Selz PC, Dec. 28, 2012
Friedman Letter: Letter from Howard M. Friedman, Professor of Law Emeritus, University of Toledo, Apr. 27, 2012
Front Page Letter: Letter from Robert Hoskins, Vice President, Media Relations, Front Page Public Relations, Mar. 2, 2013
Frost Letter: Letter from Henry Frost, Sept. 17, 2012
FundaGeek Letter: Letter from Cary Harwin, President, Co-Founder, FundaGeek.com, May 26, 2012
Genedyne Letter 1: Letter from Thomas Braun, Genedyne Corporation, Aug. 16, 2012
Genedyne Letter 2: Letter from Thomas Braun, Genedyne Corporation, Sept. 11, 2012
Gomez Letter 1: Letter from Christian Gomez, Hayward, California, Nov. 12, 2012
Gomez Letter 2: Letter from Chris Gomez, Hayward, California, Nov. 24, 2012
Gornick Letter: Letter from Stephen Gornick, May 20, 2012
Gregory Letter: Letter from Paul M. Gregory, Aug. 2, 2012
Grow VC Letter: Letter from Jouko Ahvenainen and Valto Loikkanen, Co-founders, Grow VC, Jun. 15, 2012
Hakanson Letter: Letter from Sten Erik Hakanson, Sep. 18, 2013
Hansen Letter: Letter from Brian G. Hansen, Oct. 17, 2012
Hemlof Letter: Letter from Loris Hemlof, Australia, Sept. 1, 2012
Hensel Letter: Letter from Karl Hensel, May 15, 2012
High Tide Letter: Letter from Albert Hartman, CEO, High Tide, Jun. 4, 2012
Holofy Letter: Letter from Chris Nunes, Esq., CEO, Holofy, May 15, 2013
Hutchens Letter: Letter from Matthew C. Hutchens, Sep. 29, 2013
Immix Letter: Letter from Jerry Carleton, Robert Scott, Kane Lemley, and John French, Immix Law Group PC, Oct. 4, 2012
InitialCrowdOffering Letter: Letter from Perry D. West, Esq., InitialCrowdOffering.com, May 4, 2012
International Franchise Association Letter: Letter from Jay Perron, Vice President, Government Relations and Public Policy, International Franchise Association, Jan. 31, 2013
Isenberg Letter: Letter from Daniel Isenberg, Ph.D., Apr. 15, 2012
Jain Letter: Letter from Runjan A. Jain, Apr. 12, 2012
Koller Letter: Letter from Jonathan Koller, May 2, 2012
Le Jeune Letter: Letter from Yann Le Jeune, CEO, French Crowdfund Platform, Sept. 1, 2012
Landon Letter 1: Letter from Christine Landon, Jul. 18, 2012
Landon Letter 2: Letter from Christine Landon, Jul. 18, 2012
Larkey Letter: Letter from Caren L. Larkey, Film Producer, May 23, 2012
LeGaye Letter: Letter from Daniel E. LeGaye, The LeGaye Law Firm, P.C., Sept. 7, 2012
Li Letter: Letter from H. Bruce Li, Ph.D. P.E., Apr. 27, 2012
Leonhardt Letter 1: Letter from Howard J. Leonhardt, CEO, Leonhardt Ventures and CalXStars Business Accelerator, Co-Leader Startup, California, Sept. 29, 2012
Leonhardt Letter 2: Letter from Howard J. Leonhardt, Founder, Leonhardt Ventures, Jul. 11, 2013
Liles Letter 1: Letter from Mike Liles, Jr., Seattle, Apr. 17, 2012
Liles Letter 2: Letter from Mike Liles, Jr., Apr. 18, 2012
Lingam Letter 1: Letter from Kiran Lingam, Esq., Apr. 11, 2012
Lingam Letter 2: Letter from Kiran Lingam, Apr. 24, 2012
Lingam Letter 3: Letter from Kiran Lingam, May 1, 2012
Litwak Letter: Letter from Mark Litwak, Apr. 17, 2012
Lumeo.com Letter: Letter from Brian McDonough, CEO & Founder, Lumeo.com, Sept. 6, 2012
Loofbourrow Letter: Letter from Joe Loofbourrow, Apr. 24, 2012
MacDonald Letter: Letter from Larry A. MacDonald, May 1, 2012
Markay Letter: Letter from Mark W. Kanter, Founder, Markay Company, Jun. 25, 2012
Markel Letter: Letter from Thomas O. Markel, Jr., Apr. 26, 2012
Matthew Letter: Letter from Matthew L., Aug. 19, 2012
Maugain Letter: Letter from Etienne Maugain, Apr. 12, 2012
Merkley Letter: Letter from Sen. Jeffrey A. Merkley, *et al.,* U.S. Senate, Dec. 10, 2012
Mollick Letter: Letter from Dr. Ethan Mollick, Assistant Professor of Management, The Wharton School, University of Pennsylvania, Dec. 17, 2012
Moore Letter: Letter from Jason Moore, Manager, Apr. 23, 2012
Moss Letter: Letter from Frank H. Moss, Jr., Adjunct Professor of Info Systems & Tech, Sept. 26, 2012
Movie Stream Productions Letter: Letter from Dorian S. Cole, Movie Stream Productions, Jun. 1, 2012
NanoIVD Letter: Letter from Sunnie P. Kim, Founder, CEO, NanoIVD, Inc., May 18, 2012
NASAA Letter: Letter from Jack Herstein, President, North American Securities Administrators Association, Jul. 3, 2012
NCA Letter: Letter from National Crowdfunding Association, May 11, 2012
NSBA Letter: Letter from David R. Burton, General Counsel, National Small Business Association, Jun. 12, 2012
Ohio Division of Securities Letter: Letter from Andrea L. Seidt, Commissioner, Ohio Division of Securities, Jan. 9, 2013
Old Takoma Letter: Letter from Patricia Baker, Executive Director, Old Takoma Business Association, May 24, 2013
P2PVenture.org Letter: Letter from Frederic Baud, President P2PVenture.org, France, Sept. 1, 2012
Parker Letter: Letter from Joe Parker, CEO, Apr. 12, 2012
Pearfunds Letter: Letter from Hector Vizcarrondo, Co-founder & CEO, Pearfunds, LLC, Jul. 30, 2012
Pena Letter: Letter from Fred Pena, May 10, 2012
Petazzoni Letter: Letter from Enrico Petazzoni, Feb. 15, 2013
Philipose Letter 1: Letter from Roy Philipose, Jun. 28, 2012
Philipose Letter 2: Letter from Roy Philipose, Jun. 30, 2012
PMIRARQ Letter: Letter from Steven A. Cinelli, Founder & CEO, PMIRARQ, Jul. 26, 2012
PPM Logix Letter: Letter from Mike Stapleton, PPM Logix, May 22, 2012
Priore Letter: Letter from Robert Priore, May 2, 2012
PREA Letter: Letter from Paul White, Professional Real Estate Advisors Inc., Jul. 22, 2013
Projectheureka Letter: Letter from Anthony and Erika Endres, Projectheureka LLC, Sep. 10, 2013
Ramos Letter: Letter from Robert Ramos, Aug. 14, 2013
RDA Letter: Letter from Harry Shamir, Principal, RDA Co., Apr. 16, 2012
RentalCompare Letter: Letter from Darryl Aken, RentalCompare, Apr. 24, 2013
Replay Games Letter: Letter from Paul Trowe, Replay Games, Sept. 4, 2012

Rey Media Letter: Letter from David Rey, Rey Media, Apr. 24, 2013
RFPIA Letter 1: Letter from T.W. Kennedy, BE., CEO, Kennedy Associates, Apr. 20, 2012
RFPIA Letter 2: Letter from T.W. Kennedy, B.E., Regulated Funding Portal Industry Association, Jul. 25, 2012
RFPIA Letter 3: Letter from T.W. Kennedy, B.E., Regulated Funding Portal Industry Association, Aug. 18, 2012
RFPIA Letter 4: Letter from T.W. Kennedy, B.E., Regulated Funding Portal Industry Association, Aug. 18, 2012
RFPIA Letter 5: Letter from T.W. Kennedy, B.E., Regulated Funding Portal Industry Association, Jul. 9, 2013
Risingtidefunding.com Letter: Letter from Neal C. McCane, CFA, Co-Founder, risingtidefunding.com, Sept. 26, 2012
Richter Letter: Letter from Paul W. Richter, PW Richter PLC, Feb. 7. 2013
Roberts Letter: Letter from Ward Roberts, May 25, 2012
RocketHub Letter 1: Letter from Alon Hillel-Tuch, Co-Founder & CFO, RocketHub.com, May 1, 2012
RocketHub Letter 2: Letter from Alon Hillel-Tuch, Founder & CFO, RocketHub.com, Nov. 14, 2012
Rocketjet Letter: Letter from Daniel E. Nelson, Ph.D., JD, Chairman, Rocketjet Corporation, Apr. 13, 2012
Romano Letter: Letter from Robert Romano, Apr. 12, 2012
Schumer Letter: Letter from Jacob J. Schumer, Staff Editor, Vanderbilt Journal of Entertainment and Technology Law, Sept. 4, 2012
Schwartz Letter: Letter from Andrew A. Schwartz, Associate Professor of Law, University of Colorado, Jun. 13, 2013
Shefman Letter: Letter from Michael Shefman, Aug. 21, 2013
Sidman Letter 1: Letter from Charles L. Sidman, MBA, Ph.D., Manager, Crowdfunding Investment Angels, Nov. 30, 2012
Sidman Letter 2: Letter from Charles L. Sidman, MBA, Ph.D., Manager, Crowdfunding Investment Angels, Mar. 8, 2013
Sjogren Letter: Letter from Karl M. Sjogren, Apr. 25, 2013
Sklar Law Letter: Letter from Navid More, Associate Attorney, Sklar Law, P.C., Jun. 24, 2012
Skweres Letter: Letter from Mary Ann Skweres, Independent Film Professional, Jun. 3, 2012
Spinrad Letter 1: Letter from Paul Spinrad, Jul. 26, 2012
Spinrad Letter 2: Letter from Paul Spinrad, Jan. 2, 2013
STA Letter: Letter from Charles V. Rossi, President, The Securities Transfer Association, Inc., Sept. 17, 2012
Stafford Letter: Letter from Darrell M. Stafford, Apr. 11, 2012
Start.ac Letter: Letter from Rod Turner, CEO and Founder, Start.ac CrowdFunding business, Jun. 12, 2012
Stephenson Letter: Letter from Andrew D. Stephenson, Esq., Washington, May 14, 2012
Sutter Securities Letter: Letter from Robert A. Muh, Chief Executive Officer, Sutter Securities Incorporated, Oct. 25, 2012
Sykes Letter: Letter from Chad Sykes, Apr. 15, 2012
Tally Letter: Letter from John Tally, May 28, 2012
TechnologyCrowdFund Letter 1: Letter from Robert B. Nami, CEO/President, TechnologyCrowdFund.com, May 1, 2012
TechnologyCrowdFund Letter 2: Letter from Robert B. Nami, President/CEO, TechnologyCrowdFund.com, May 30, 2012
TechnologyCrowdFund Letter 3: Letter from Robert B. Nami, President/CEO, TechnologyCrowdFund.com, Jun. 5, 2012
TechnologyCrowdFund Letter 4: Letter from Robert B. Nami, President/CEO, TechnologyCrowdFund.com, Jun. 7, 2012
TechnologyCrowdFund Letter 5: Letter from Robert B. Nami, CEO/President TechnologyCrowdFund, Jun. 28, 2012
TechnologyCrowdFund Letter 6: Letter from Robert B. Nami, CEO/President TechnologyCrowdFund, Jan. 16, 2013
The Growth Group Letter: Letter from Elliott Dahan, Managing Partner, The Growth Group, May 1, 2012
The Motley Fool Letter: Letter from Ilan L. Moscovitz and John Maxfield, The Motley Fool, Jun. 27, 2012
Tomkinson Letter: Letter from Paul Tomkinson, Sept. 21, 2012
Totsie Productions Letter: Letter from Kevin J. Tostado, Producer, Totsie Productions, Jan. 20, 2013
Tri Valley Law Letter: Letter from Marc A. Greendorfer, Tri Valley Law, Apr. 27, 2012
Verdant Ventures Letter: Letter from Ross Randrup, Managing Member, Verdant Ventures LLC, Jun. 17, 2012
Vermont Investors Letter: Letter from Sebastian Sweatman, Vermont Investors Forum, Apr. 25, 2012
Vim Funding Letter: Letter from Shane M. Fleenor, Vim Funding, Inc., Creator of Funding Launchpan, Co-founder and CLO, Apr. 27, 2012
Vogele Letter: Letter from John Vogele, Dec. 26, 2012
VS Technology Letter: Letter from Michael Van Steenburg, CEO of VS Technology Inc., Aug. 31, 2012
VTNGLOBAL Letter: Letter from Peter Ojo, CEO, VTNGLOBAL, May 31, 2012
West Letter: Letter from Perry D. West, Esq., Apr. 13, 2012
Whitacre Letter: Letter from William L. Whitacre, Esq., Apr. 18, 2012
Whitaker Letter: Letter from John R. Fahy, Partner, Whitaker Chalk Swindle Schwartz PLLC, Nov. 8, 2012
Windhom Letter: Letter from Stevario Windhom, Jun. 13, 2012
Winfiniti Letter: Letter from Dan Grady, CEO, Winfiniti, Inc., Apr. 11, 2012
Williams Letter: Letter from John P. Williams, Feb. 7, 2013
Williams K. Letter: Letter from Keith Williams, Mar. 2, 2013
Wright Letter 1: Letter from Martin Wright, Aug. 7, 2012
Wright Letter 2: Letter from Martin Wright, Aug. 7, 2012
Wright Place Letter: Letter from Dr. Letitia S. Wright, May 4, 2012

[FR Doc. 2013–25355 Filed 11–4–13; 8:45 am]
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FEDERAL REGISTER

Vol. 78 Tuesday,

No. 214 November 5, 2013

Part III

The President

Federal Register
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Tuesday, November 5, 2013

Presidential Documents

Title 3—

The President

Proclamation 9047 of October 31, 2013

Critical Infrastructure Security and Resilience Month, 2013

By the President of the United States of America

A Proclamation

Over the last few decades, our Nation has grown increasingly dependent on critical infrastructure, the backbone of our national and economic security. America's critical infrastructure is complex and diverse, combining systems in both cyberspace and the physical world—from power plants, bridges, and interstates to Federal buildings and the massive electrical grids that power our Nation. During Critical Infrastructure Security and Resilience Month, we resolve to remain vigilant against foreign and domestic threats, and work together to further secure our vital assets, systems, and networks.

As President, I have made protecting critical infrastructure a top priority. Earlier this year, I signed a Presidential Policy Directive to shore up our defenses against physical and cyber incidents. In tandem with my Executive Order on cybersecurity, this directive strengthens information sharing within my Administration and between the Federal Government and its many critical infrastructure partners, while also ensuring strong privacy protections. Because of the interconnected nature of our critical infrastructure, my Administration will continue to work with businesses and industry leaders and build on all the great work done to date. With these partners, and in cooperation with all levels of government, we will further enhance the security and resilience of our critical infrastructure.

We must continue to strengthen our resilience to threats from all hazards including terrorism and natural disasters, as well as cyber attacks. We must ensure that the Federal Government works with all critical infrastructure partners, including owners and operators, to share information effectively while jointly collaborating before, during, and after an incident. This includes working with infrastructure sectors to harden their assets against extreme weather and other impacts of climate change.

Emerging and evolving threats require the engagement of our entire Nation—from all levels of government to the private sector and the American people. This month, as we recognize that safeguarding our critical infrastructure is an economic and security imperative, let each of us do our part to build a more resilient Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as Critical Infrastructure Security and Resilience Month. I call upon the people of the United States to recognize the importance of protecting our Nation's resources and to observe this month with appropriate events and training to enhance our national security and resilience.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26667
Filed 11–4–13; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9048 of October 31, 2013

Military Family Month, 2013

By the President of the United States of America

A Proclamation

Throughout our Nation's history, an unbroken chain of patriots has strengthened us in times of peace and defended us in times of war. Yet the courageous men and women of the United States military do not serve alone. Standing alongside them are husbands and wives, parents and children, sisters and brothers. During Military Family Month, we celebrate the families who make daily sacrifices to keep our Nation whole, and we remember a most sacred obligation—to serve them as well as they serve us.

Military families exemplify the courage and resolve that define our national character. For their country and their loved ones, they rise to the challenges of multiple deployments and frequent moves—spouses who care and provide for children in their partners' absence, kids who make new friends and leave known comforts behind. They are the force behind the force, patriots who support their family members in uniform while enriching the communities they call home.

While our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen are defending the country they love, their country must provide for the families they love. Through First Lady Michelle Obama and Dr. Jill Biden's Joining Forces initiative, my Administration has worked tirelessly to engage American citizens and businesses in this cause. Joining Forces encourages the private sector to hire veterans and military spouses, helps schools become more responsive to military children's needs, and expands access to wellness and education programs for military families. Since the initiative began in 2011, businesses have hired and trained more than 290,000 veterans and military spouses. My Administration is also taking action to improve mental health care and education for veterans, service members, and their families. Last year, I signed an Executive Order directing the Federal Government to increase access to these vital services. And this year, as a result of the Supreme Court decision striking down Section 3 of the Defense of Marriage Act, the Department of Defense moved swiftly to extend benefits to legally married same-sex couples.

Time and again, our service members and their families have sacrificed to protect the promise that defines our Nation—life, liberty, and the pursuit of happiness. As we work to repay this enormous debt of gratitude, I encourage every American to do their part. Together, let us support our military children as they learn, grow, and live their dreams. And let us keep our military families strong and secure.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as Military Family Month. I call on all Americans to honor military families through private actions and public service for the tremendous contributions they make in the support of our service members and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26668
Filed 11–4–13; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9049 of October 31, 2013

National Adoption Month, 2013

By the President of the United States of America

A Proclamation

Every young person deserves the chance to learn and grow under the care of a loving family. Across our Nation, adoptive families give that chance to over a million children and teenagers. During National Adoption Month, we celebrate these families and stand alongside every child still looking for the warmth and stability of a permanent home.

Today, nearly 400,000 American children are in foster care, and each year, thousands age out of care without the security that comes from a permanent family or a place to call home. On November 23, National Adoption Day will offer a sense of hope to children waiting for adoptive parents. As we observe this day, courts across our country will open their doors to finalize adoptions that move young people out of foster care.

My Administration has worked to simplify adoption laws; reduce the amount of time young children go without parents; and ensure adoption rights for all qualified couples and individuals. We are calling for an end to discriminatory barriers that keep children from loving and stable homes. And we are working across all levels of government to eliminate roadblocks to adoption and encourage cooperation between adoption advocates, private organizations, and community and faith-based groups. This January, I was proud to sign legislation to permanently extend the Adoption Tax Credit. And to protect the young people of every nation, I signed the Intercountry Adoption Universal Accreditation Act. This law will promote safe and lawful adoptions by setting Federal standards for all adoption service providers, and it will provide greater safeguards to both parents and children.

This month, we celebrate adopted children, teenagers, and their diverse families. We work to give more young people permanent families and promising futures. And we encourage our friends and neighbors to open their hearts and their homes to children in need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as National Adoption Month. I encourage all Americans to observe this month by answering the call to find a permanent and caring family for every child in need, and by supporting the families who care for them.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26669
Filed 11–4–13; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9050 of October 31, 2013

National Alzheimer's Disease Awareness Month, 2013

By the President of the United States of America

A Proclamation

Alzheimer's disease is an irreversible and progressive brain disease that slowly erodes precious memories, thinking skills, and the ability to perform simple tasks. It affects millions of Americans, including senior citizens as well as younger Americans with early-onset Alzheimer's disease. This month, we stand with everyone confronting the painful reality of an Alzheimer's diagnosis; lend our support to the families who care for them; and renew our commitment to delaying, preventing, and ultimately curing this disease.

In research labs across our country and around the world, scientists are working to unlock the answers to Alzheimer's disease. My Administration proudly supports this promising research. Earlier this year, I proposed the Brain Research through Advancing Innovative Neurotechnologies (BRAIN) Initiative, which aims to revolutionize our understanding of the human brain. By mapping the brain, we hope to better comprehend the causes of disorders like Alzheimer's disease and enhance our work on improving treatment. In September, the National Institutes of Health announced support for innovative new studies to help find effective interventions for this devastating degenerative brain disease. And my Administration also remains committed to implementing the first-ever National Plan to Address Alzheimer's Disease, which lays out a roadmap to preventing and effectively treating Alzheimer's disease by 2025.

Working together with scientists, patient advocates, and those living with this disease, we can give a sense of hope to millions of families, patients, and caregivers. For resources and information on living with or caring for someone with Alzheimer's disease, please visit www.Alzheimers.gov.

As we offer our support to Americans with Alzheimer's disease, we also recognize those who care and provide for them, sharing their loved ones' emotional, physical, and financial strains. This month, we honor their compassion, remember those we have lost, and press toward the next great scientific breakthrough.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to learn more about Alzheimer's disease and support the individuals living with this disease and their caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26670
Filed 11–4–13; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9051 of October 31, 2013

National Diabetes Month, 2013

By the President of the United States of America

A Proclamation

With more than 25 million Americans living with a diabetes diagnosis, and many more going undiagnosed, diabetes affects people across our country and remains a pressing national health concern. During National Diabetes Month, we renew our dedication to combating this chronic, life-threatening illness by standing with those living with diabetes, honoring the professionals and advocates engaged in fighting diabetes, and working to raise awareness about prevention and treatment.

Diabetes can lead to serious complications, including heart disease, stroke, kidney failure, and blindness. Type 1 diabetes, often diagnosed in children, limits insulin production and its causes are not well defined. Type 2 diabetes, which accounts for more than 90 percent of diabetes cases, has been linked to older age and family history, although it is increasingly being diagnosed in younger Americans and is associated with obesity and inactivity. The risk is particularly high among African Americans, Hispanic Americans, American Indians, and some Asian Americans and Pacific Islanders. I encourage all Americans to talk to their health care provider about steps they can take to prevent or manage this disease.

With diabetes ranking among the leading causes of death in the United States, my Administration is committed to supporting Americans living with diabetes, investing in promising scientific research, advancing work toward improved treatment and care, and bolstering prevention efforts. Thanks to the Affordable Care Act, beginning in 2014, no American with diabetes can be denied health insurance based on their diagnosis, and in most plans, Americans at increased risk can access diabetes screenings at no cost to them. The National Diabetes Prevention Program engages private and public partners to help people with prediabetes adopt lifestyles that can prevent or delay Type 2 diabetes, and the National Diabetes Education Program focuses on delaying and preventing disease onset while also working to improve outcomes for those living with the disease.

With our next generation in mind, First Lady Michelle Obama's *Let's Move!* initiative has taken on the staggering rise in childhood obesity our Nation has seen over the past three decades, and *Let's Move!* is empowering families and communities to put children on a path to healthier futures. Obese children face an increased risk of adult obesity and all the health risks that come with it, including Type 2 diabetes. By connecting children with healthy, affordable food options and the opportunity to be active in their communities, *Let's Move!* is helping our sons and daughters reach a healthier, more promising tomorrow.

This month, as we remember those we have lost to diabetes and support those living with the illness, let us look to a day with fewer cases of diabetes, a firmer understanding of the disease, and better outcomes for all those affected. By continuing the important research, outreach, and care delivery we have already begun, we know we can get there.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013

as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, research institutions, and other interested groups to join in activities that raise diabetes awareness and help prevent, treat, and manage the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26673
Filed 11–4–13; 11:15 am]
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Presidential Documents

Proclamation 9052 of October 31, 2013

National Entrepreneurship Month, 2013

By the President of the United States of America

A Proclamation

The entrepreneurial spirit has always been at the heart of our Nation's story. With inventions that changed American life and startups that lifted our economy as they grew, entrepreneurs helped make our country what it is today. During National Entrepreneurship Month, we celebrate America's innovators, support small businesses, and empower entrepreneurs to turn their visions into reality.

America is home to a long and storied line of immigrants who sought opportunity on our shores—from entrepreneurs of the industrial revolution to startup founders of the digital age. This June, the Senate passed a common-sense immigration reform bill that would provide startup visas for immigrant entrepreneurs; eliminate backlogs for employment-based visas; and remove visa caps for those with advanced degrees in science, technology, engineering, and mathematics. These principles are consistent with ensuring our country remains a land of opportunity while fostering economic growth and innovation.

For the benefit of our Nation, we must remove undue barriers that would prevent entrepreneurs from venturing out on their own. The Affordable Care Act provides opportunities for those who lack employer-based insurance to obtain quality affordable care. This gives aspiring small business owners and self-employed entrepreneurs the freedom to pursue their ideas and keep their families covered. This year, I signed an Executive Order making Government-held data more accessible to the public and to entrepreneurs as fuel for innovation and economic growth. Hundreds of companies and nonprofits are using this data to develop new products and services. They are creating jobs of the future in national priority industries such as health, energy, and education. We have also worked to support social entrepreneurship at home and around the world, and in January, my Administration organized the first-ever White House Tech Inclusion Summit—where experts launched initiatives to give more Americans the opportunity to learn vital technology skills.

We continue to build on programs that help entrepreneurs get ahead. Since taking office, I have signed 18 small business tax cuts into law, and, as part of the American Taxpayer Relief Act, I extended several tax incentives to help small businesses prosper. Under last year's Jumpstart Our Business Startups (JOBS) Act, the American people will soon be able to use regulated crowdfunding Web sites to invest in promising startups, social enterprises, and small businesses. The White House Startup America initiative remains dedicated to cutting red tape and accelerating innovation from the lab to the marketplace. Entrepreneurs across the country are receiving vital information about Federal Government services at www.Business.USA.gov and are competing to solve important national problems at www.Challenge.gov.

To promote entrepreneurship throughout the world, I have called on the international community to increase transparency and accountability while rooting out corruption, and in 2010, my Administration organized the first annual Global Entrepreneurship Summit. During this year's summit, the State Department announced its partnership to help double the impact of

UP Global—an organization dedicated to providing entrepreneurs at home and abroad with the resources, skills, and connections to thrive. Finally, we will soon announce the inaugural members of the President's Committee on Global Entrepreneurship, a group of some of America's most successful entrepreneurs who will commit to mentoring the next generation.

Our Nation is strongest when we broaden entrepreneurial opportunity, when more of us can test our ideas in the global marketplace, and when the best innovations can rise to the top. We all have a role to play—from colleges and universities that cultivate hubs of innovation, to large companies that collaborate with small businesses, to foundations that support both social enterprises and high-impact startups seeking to solve the grand challenges of our time. As we observe this month and celebrate Global Entrepreneurship Week, let us come together and help aspiring entrepreneurs take a chance on themselves and their visions for a brighter future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 22, 2013, as National Entrepreneurs' Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26674
Filed 11–4–13; 11:15 am]
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Presidential Documents

Proclamation 9053 of October 31, 2013

National Family Caregivers Month, 2013

By the President of the United States of America

A Proclamation

Across our country, more than 60 million Americans take up the selfless and unheralded work of delivering care to seniors or people with disabilities or illnesses. The role they play in our healthcare system is one we must recognize and support. During National Family Caregivers Month, we thank these tireless heroes for the long, challenging work they perform behind closed doors and without fanfare every day, and we recommit to ensuring the well-being of their loved ones and of the caregivers themselves.

Under the Affordable Care Act, patients and caregivers can benefit from a new Medicare pilot program that helps beneficiaries negotiate the transition from hospital to home. And through new Medicaid options, States can expand access to home and community-based services. With caregivers already balancing their own needs with those of their loved ones, and in many cases caring for both young children and aging parents, our Nation's caregivers need and deserve our support. With this in mind, local agencies work to connect individuals with options including adult day care, respite care, training programs, and caregiver support groups—all shaped with the understanding that the generous women and men who take the health of their loved ones into their hands should not suffer from the toll caregiving can take.

There is no one to whom America owes more than our ill and injured service members and veterans, and while many offer kindness and assistance, it is the caregivers who truly sustain our wounded warriors as they work toward rehabilitation or recovery. In 2010, I was proud to sign the Caregivers and Veterans Omnibus Health Services Act, which provides the caregivers of our seriously injured post-9/11 veterans with training, counseling, supportive services, and living stipends. Under this law, injured veterans' family caregivers also receive access to health care.

Just as our loved ones celebrate with us in our moments of triumph, American families strengthen the fabric of our Nation by lifting each other up in the face of life's greatest challenges. And as Americans put their loved ones before themselves, we must offer our appreciation and flexibility, in our healthcare system, our workplaces, and our communities. This month, as we reflect on the generosity, grace, and strength of family caregivers, we renew our commitment to matching their dedication to the health and wellness of families across our country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as National Family Caregivers Month. I encourage all Americans to pay tribute to those who provide for the health and well-being of their family members, friends, and neighbors.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26675
Filed 11–4–13; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9054 of October 31, 2013

National Native American Heritage Month, 2013

By the President of the United States of America

A Proclamation

From Alaskan mountain peaks to the Argentinian pampas to the rocky shores of Newfoundland, Native Americans were the first to carve out cities, domesticate crops, and establish great civilizations. When the Framers gathered to write the United States Constitution, they drew inspiration from the Iroquois Confederacy, and in the centuries since, American Indians and Alaska Natives from hundreds of tribes have shaped our national life. During Native American Heritage Month, we honor their vibrant cultures and strengthen the government-to-government relationship between the United States and each tribal nation.

As we observe this month, we must not ignore the painful history Native Americans have endured—a history of violence, marginalization, broken promises, and upended justice. There was a time when native languages and religions were banned as part of a forced assimilation policy that attacked the political, social, and cultural identities of Native Americans in the United States. Through generations of struggle, American Indians and Alaska Natives held fast to their traditions, and eventually the United States Government repudiated its destructive policies and began to turn the page on a troubled past.

My Administration remains committed to self-determination, the right of tribal governments to build and strengthen their own communities. Each year I host the White House Tribal Nations Conference, and our work together has translated into action. We have resolved longstanding legal disputes, prioritized placing land into trust on behalf of tribes, stepped up support for Tribal Colleges and Universities, made tribal health care more accessible, and streamlined leasing regulations to put more power in tribal hands. Earlier this year, an amendment to the Stafford Act gave tribes the option to directly request Federal emergency assistance when natural disasters strike their homelands. In March, I signed the Violence Against Women Reauthorization Act, which recognizes tribal courts' power to convict and sentence certain perpetrators of domestic violence, regardless of whether they are Indian or non-Indian. And this June, I moved to strengthen our nation-to-nation relationships by establishing the White House Tribal Council on Native American Affairs. The Council is responsible for promoting and sustaining prosperous and resilient Native American communities.

As we observe Native American Heritage Month, we must build on this work. Let us shape a future worthy of a bright new generation, and together, let us ensure this country's promise is fully realized for every Native American.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2013 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 29, 2013, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2013–26677
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Federal Register

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